



# BENCHERS' BULLETIN

Keeping BC lawyers informed

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# Looking back on a productive 2018

by Miriam Kresivo, QC

IT SEEMS LIKE just yesterday that I began my term as president of the Law Society, eager to accomplish the goals in our ambitious 2018-2020 Strategic Plan. As my term comes to an end, I am pleased by the progress we have made on several significant initiatives. I will end my presidency proud of what has been accomplished this year, through the hard work of the Benchers and staff of the Law Society.

I am deeply passionate about improving the public's access to legal services, which is why I am very pleased with our focus this year on the need for better legal aid and our efforts to establish a new category of legal professional, the licensed paralegal. This year, I met with Attorney General David Eby, QC a number of times, and each time I stressed the importance of adequate public funding for criminal and family legal aid in BC. In addition, the Alternate Legal Service Provider Working Group that I chair put forward a proposal for a new category of licensed professional in the area of family law and began a process of consultation on what these licensed paralegals might be authorized to do.

As you are aware, the licensed paralegal initiative has sparked an important conversation about access to justice. While this year's annual general meeting saw the passage of a resolution directing the Benchers not to authorize licensed paralegals to practise family law, our consultation on licensed paralegals will nevertheless continue until the end of the year. The Benchers will then have to take time to consider both the challenges and the opportunities that licensed paralegals present in addressing the need for better access to justice.

In July, the Benchers took an important step toward our commitment to transform Indigenous people's experiences with the

administration of justice with their approval of the Law Society's Truth and Reconciliation Action Plan. This is an ambitious step forward.

The Law Society also took a leading role with the Federation of Law Societies of Canada in the work being done to prevent money laundering. In addition to consulting with the profession on new draft rules, we took steps to ensure the profession was well aware of all the anti-money laundering rules that apply to trust funds and we increased audits of lawyer trust accounts to ensure compliance.

This year also saw the Law Society and legal profession make significant progress in the area of mental health and the profession. In November, the Mental Health Task Force delivered its first set of policy recommendations which were then approved at the last Benchers meeting of the year. Implementation of the recommendations will follow in 2019.

As you can tell, it was a busy and productive year. At the end of December, I will hand the reins over to Nancy Merrill, QC, who will be the 2019 president of the Law Society. I have no doubt that Nancy will be a wonderful president and will work hard on the Law Society's initiatives in the year to come. She will be supported by Craig Ferris, QC as first vice-president and Dean Lawton, QC as second vice-president, along with Don Avison and the dedicated staff of the Law Society. I would like to take this moment to thank Don and all of the outstanding Law Society staff, whose dedication is remarkable. And to my fellow Benchers, it has been an honour to serve with you — I could not be more proud to have had you as colleagues. I look forward to what you will achieve for the public interest in the years ahead. ❖

## BENCHERS' BULLETIN

The *Benchers' Bulletin* and related newsletters are published by the Law Society of British Columbia to update BC lawyers, articulated 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](mailto: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](mailto:communications@lsbc.org).

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## Richard Peck, QC receives Law Society Award

THE BENCHERS SELECTED Richard C.C. Peck, QC as the recipient of the Law Society Award for 2018 (pictured with President Miriam Kresivo, QC). The award was presented to Peck at the Bench and Bar Dinner on November 7, 2018.

In 1974, Peck graduated from the UBC Faculty of Law. After being called to the bar in 1975, he took on difficult legal aid cases for marginalized clients and forged a reputation for excellence in advocacy, integrity and unimpeachable good character. In 1987, Peck received the Queen's Counsel designation. Since 1992, he has been a founding partner at Peck and Company, one of Canada's leading criminal litigation firms.

In addition to maintaining his legal practice, Peck has taken on numerous leadership roles. He served as a Law Society Bencher from 1988 to 1997, chair of the Canadian Bar Association Criminal Justice Section, governor of the Law Foundation of BC, vice-chair of the Forensic Psychiatric Services Commission of BC and chair of the Regional Committee for BC for the Supreme Court Advocacy Institute.

Throughout his impressive career,

Peck made extraordinary contributions to legal education in the areas of criminal law, advocacy and ethics. He has written numerous articles on criminal law and edited several legal publications on the history and reform of criminal law. For decades, he has been a regular guest lecturer at various conferences, the Professional Legal Training Course, the Inns of Court and other programs. Peck also co-founded the Trial Advocacy program at UBC. His advocacy shaped the development of substantive criminal law and Charter jurisprudence in Canada.

Peck frequently assists other lawyers in need of advice or guidance, and has mentored numerous articulated students and young lawyers who have gone on to become exceptional advocates, judges and



Brian Dennehy Photography

law school professors.

For more than 40 years, Peck has upheld the highest standards of integrity, professionalism and community service, making enormous contributions to legal education, advocacy and the administration of justice. ❖

## Jacqueline McQueen elected in Vancouver County by-election



Jacqueline McQueen has been elected a Bencher in the November 15, 2018 by-election for Vancouver County.

A native of British Columbia, McQueen completed her BA at York University and her LLB at Osgoode Hall in 1993. She was called to the bar in Ontario in 1995, BC in 1996 and New Zealand in 2001. She currently practises family law and is a partner at Aaron Gordon Daykin Nordlinger LLP, a

boutique family law firm in Vancouver.

McQueen has been an active volunteer in the legal profession and community: in a variety of Canadian Bar Association Vancouver sections, including at the executive level; as a mentor through the CBA Women Lawyers Forum; at Continuing Legal Education of BC as a contributing author to Annotated Family Practice and as a course presenter; as a moot court judge in the Professional Legal Training Course; and in pro bono legal advice programs. She has also been a board member on community organizations, including

365give, a registered not-for-profit that encourages children to give back every day.

In her election statement, McQueen expressed a desire to bring a thoughtful, measured and compassionate approach to governance issues and to bring ideas and energy to the challenges faced by lawyers. In particular, she is interested in access to justice, competency, credentials, and mentorship and support for new lawyers.

For by-election results, see [Bencher Elections](#). ❖



### An eventful year

by Don Avison

MY FIRST YEAR as CEO was a whirlwind of introductions, briefings and meetings in which I immersed myself in the diverse and complex functions of the Law Society. With the year drawing to a close, I have a moment to pause and reflect on the many important things we do at the Law Society, and on some that will be the focus of attention in the coming year.

Our regulatory processes consume the lion's share of Law Society resources. I've been impressed, not only by the high calibre of our dedicated and hard-working staff who investigate complaints and ensure compliance, but also by the sheer volume of work that is carried out in this area. Diving deeper into the numbers, I was surprised to discover that 95 per cent of our regulatory resources are directed at dealing with five per cent of the profession. At the moment, this is nothing more than an observation — but it bears further analysis and I expect to have more to say on this in 2019.

Protecting lawyers and lawyers' trust accounts from being taken advantage of

in money laundering schemes also received my attention. The year began with Attorney General David Eby, QC striking a review into money laundering in gaming and casinos, led by Dr. Peter German. President Miriam Kresivo, QC and I met with Attorney General Eby and Dr. German to share the measures that are in place to audit trust accounts and help the legal profession avoid risk, and steps that we will take to enforce compliance with our rules. Both expressed high regard for our trust accounting procedures and, following the release of his report, Dr. German spoke favourably about the Law Society. In 2019, money laundering concerns will continue to be at the top of the government's agenda, with a second report by Dr. German looking into money laundering in the real estate sector and separate reviews launched by the minister of finance. I anticipate continuing to be engaged on this file.

Another area that I anticipate will receive my attention is updating the rules in relation to how annual general meetings

are conducted — particularly rules regarding online participation and voting. It may surprise many lawyers to know that the Law Society of BC is the first and only law society in Canada to provide online participation in general meetings. Being a pioneer has its advantages but, as evidenced by the need to adjourn the October 30 AGM, it also carries the potential for disruption. While our online service provider resolved the technical difficulty that we initially experienced and the meeting proceeded on December 4, in the year to come we will consider how to improve online participation and voting based on feedback we have had from members of the profession.

I will close by thanking President Kresivo and all the Benchers for their support. I also thank the extraordinarily dedicated staff for welcoming me, and for their hard work in successfully bringing many key projects to fruition. It has been an eventful year. I have been fortunate to have an incredibly talented group of people to work with and to support me. ❖

FROM THE RULE OF LAW AND LAWYER INDEPENDENCE ADVISORY COMMITTEE

## The rule of law and civil disobedience

THE RULE OF law is central to our freedoms. In Canada, all people (including government) are bound by the law, and those in government do not ultimately interpret the law. It is not a perfect system — not all laws are equally just — but a society adhering to the rule of law benefits from a legal process that permits laws to be challenged or re-interpreted before a group of arbiters (judges) whose independence from the executive

and legislative branches of government is assured. This system allows Canadians to enjoy both the freedoms and the stability to society that the law provides, but also to use the justice system to challenge any efforts under law, whether private or state sponsored, to limit or infringe on their legal rights and freedoms.

But paradoxically, the untrammelled exercise of our freedoms can result in a

diminishment of the social contract that allows the rule of law to flourish. And a diminishment of the rule of law inevitably leads to the diminishment of the very freedoms that are central to what we think of as being Canadian.

We are all free to hold opinions. We are not compelled in Canada to agree with the law and we are all free to decide whether we think any particular law is fair.

Fortunately, where a law needs to be challenged, there are avenues allowing us to do so. Litigation may be an option. Lobbying government to create or amend legislation may be another, because ultimately law is a reflection of social policy. If we disagree with legislation passed by Parliament or a legislature, the democratic process allows each of us to record our dissatisfaction at the ballot box, and aiming to convince others to do likewise is a valid political exercise.

Manifesting our personal dislike of validly enacted laws through civil disobedience may be justified in rare circumstances, where illegitimate exercises of state power or fundamentally unjust laws nevertheless find support under the prevailing social opinions of the times. Members of the civil rights movement in the United States recognized that forcing the state to arrest someone only (for example) because of where she sat on a bus, or where he chose to eat lunch, drew attention to unjust laws and helped to mobilize against generally accepted social structures — even slowly — to change them. Susan B. Anthony's efforts in the Women's Suffrage Movement, including voting without the legal right to do so, is another example, as is Nelson Mandela's disobedience of the laws of apartheid. Historical acts of civil disobedience that society has viewed as justified

involve profound issues of human rights and non-violent means of disobedience.

Justified civil disobedience must be viewed as a very narrow exception to the rule of law. It follows that caution needs to be exercised in considering civil disobedience



as a response to laws that are simply disagreed with based on personal political views. Outside of profound issues of human rights, choosing to disobey a law that one disagrees with is not a justifiable act of civil disobedience, it is a violation of the law. If everyone exercised their freedom of action by disobeying laws they didn't like,

society would find itself in a state of anarchy. And even where civil disobedience may be justifiable, those who are prepared to engage in it must understand and be prepared to face significant legal consequences. Civil disobedience is a sacrifice in order to achieve a change. But until the change happens there will be consequences for those who break the law.

Outside the realm of profound issues of human rights, politicians who engage in civil disobedience present a particular problem. While politicians should be free to act in accordance with their conscience, politicians are also responsible for making laws. If someone responsible for creating law does not see the necessity of abiding by it where it does not suit his or her purpose, what sort of example is set for the rest of the population?

Civil disobedience has a narrow place in civil society, but it presents its dangers too. Where citizens conclude that it is acceptable to act contrary to laws they disagree with because their conscience compels them to do so, the rule of law is diminished. And when the rule of law is diminished, the protection of individual rights and freedoms is at risk from those who view compliance with the legal structure as a matter of personal conscience. Eventually it will be lost. ❖

## Provincial government tables legislation enabling the Law Society to regulate licensed paralegals

SINCE 2008, THE Law Society has been exploring improving access to justice through the creation of a new, regulated category of legal service provider. In 2014, the Law Society asked the provincial government to amend legislation to enable the Society to put in place a new category of legal service providers and authorize the Benchers to determine the services that they could provide.

On November 27, 2018, the provincial government passed legislation that would

give the Law Society the authority that we have been seeking. Bill 57, the *Attorney General Statutes Amendments Act, 2018*, includes legislative amendments that enable the Benchers to create a new category of regulated legal service provider, called licensed paralegals, to deliver limited legal services as determined and approved by the Benchers. The bill may be found on the [Legislative Assembly website](#).

The Benchers will give serious consideration to what was expressed by members

of the profession who attended this year's annual general meeting as they take time to get the rules and responsibilities of any new category of legal service providers right. Consultation on a draft proposal has been extended to December 31, 2018. While several steps are required before any changes in who may provide legal services take effect, we are committed to continuing to engage with and receive input from the profession. ❖

## Nancy Merrill, QC, 2019 president

Brian Dennehy Photography



AS NANCY G. Merrill, QC steps into her role as president of the Law Society in 2019, she brings a career and history of dedication to the profession, particularly to its role in supporting families and children.

Born and raised in Windsor, Ontario, Nancy moved with her family to Niagara Falls as a teenager. Her first job was with the federal department known at the time as Customs and Excise, where she worked as a customs officer in Niagara before becoming a regional intelligence officer in Hamilton.

After returning to school to complete a bachelor's degree in psychology at the University of Waterloo, Nancy set her sights on a career in law. She obtained her law degree from the University of Windsor. She articulated at Schwartz, Udell & Shanfield in Windsor and was called to the bar in Ontario in 1990. Shortly after, she left Ontario to articulate with MacIsaac & Company in Nanaimo and was called to the BC bar in 1991.

It was at law school in Windsor that Nancy met her husband, Randie Long, who would also become her partner in law. In 1993, Nancy and Randie started a practice in Nanaimo under the name Merrill, Long & Co., and they continue to share the

practice today.

Nancy temporarily returned to Ontario in 2000 to complete a master's degree in tax law at Osgoode Hall. While there, she worked as a federal prosecutor with Belowus Easton English in Windsor prosecuting *Income Tax Act*, *Customs Act*, *Immigration Act* and *Bankruptcy and Insolvency Act* offences.

Today, Nancy practises predominantly in the areas of family law and estate litigation, and she is a certified mediator and arbitrator in family law. Her renown as a leading figure in the family bar did not go unnoticed by the Ministry of Attorney General, which invited her to contribute to the review of the *Family Relations Act*.

Nancy has demonstrated her commitment to the future of the profession in BC by teaching upcoming generations of lawyers as well as mentoring young lawyers. She designed and taught a course in family law at Royal Roads University and taught family law at the University of Victoria. Nancy has also been a mentor with the Canadian Bar Association Women Lawyers Forum mentoring program. In addition, she has served on the executives of CBABC's Nanaimo Family Law and Nanaimo Alternative Dispute Resolution Sections.

Nancy is dedicated to community service. Since arriving in BC, she has been on the board of a number of community organizations, including the Nanaimo Child Development Centre, the Haven Society and Habitat for Humanity. She established two non-profit organizations: The Change Room, which helped disadvantaged women transition back into the workforce; and the Nanaimo Children's Lawyer program, a pro bono child advocate initiative providing legal representation for children whose parents are involved in high conflict separation and divorce. She was also a member of the board of governors of the Law Foundation.

Nancy continues to volunteer her time and talent to the community and abroad. Here at home, she teaches courses and conducts workshops on disclosure issues for non-profit organizations working in the areas of family law and sexual assault services. Overseas, she volunteers on legal projects dealing with the rights of women and children, including an international project in conjunction with the Canadian Embassy in Havana, Cuba, with a focus on the rights of children.

Nancy is an international traveller. While she enjoys travelling in comfort to such cosmopolitan destinations as Florence, Venice and Paris, she has also travelled into the jungles of the lost Maya civilization in Honduras and trekked by elephant to remote areas of Thailand. Any profile of Nancy would be remiss if it did not also mention the sharp wit she is known for, particularly among fellow members of her Nanaimo book club.

Nancy currently chairs the Law Society's Truth and Reconciliation Advisory Committee and the Legal Aid Advisory Committee. In the past, she has chaired the Ethics Committee, the Practice Standards Committee, the Lawyer Education Advisory Committee and the Equity and Diversity Advisory Committee. She regularly chairs discipline and credentials hearings.

In addition to supporting new lawyers, one of Nancy's goals in 2019 is to work with communities to address the loss of lawyers in northern and rural BC. ❖

# Annual general meeting results

THE LAW SOCIETY'S annual general meeting concluded on December 4, after being adjourned on October 30 due to technical difficulties. More than 1,700 members of the legal profession participated online and in person at locations around the province. In addition to approving PricewaterhouseCoopers as the auditor for the 2018, lawyers who attended the meeting voted on three resolutions, two of which passed and one was defeated.

Full text of the resolutions and voting results are as follows:

**Resolution 1:** Be it resolved that PricewaterhouseCoopers be appointed as the Law Society auditors for the year ending December 31, 2018.

The resolution passed, with 1,342 in favour, 21 against and 74 abstentions.

**Resolution 2:** Be it resolved that:

a) the Benchers be directed to continue

to advocate for the adequate funding of legal aid, to be administered by an organization independent from government; and

b) the Benchers be directed to take steps to encourage and reduce barriers to members to undertake legal aid and pro bono cases, within their field of expertise.

The resolution passed, with 1,302 in favour, 368 against and 59 abstentions.

**Resolution 3:** Be it resolved that membership directs the Benchers:

a) to request that the provincial government not pass regulations to bring the licensed paralegal amendments into force until the Benchers have had more time to complete their consultations regarding licensed paralegals; and

b) not to authorize licensed paralegals to

practise family law under the authority provided in the amendments to the *Legal Profession Act*.

The resolution passed, with 861 in favour, 297 against and 62 abstentions.

**Resolution 4:** Be it resolved that, lawyers practising in British Columbia be required to perform a minimum of 10 pro bono hours per calendar year in order to maintain their practice status.

The resolution was defeated, with 116 in favour, 937 against and 19 abstentions.

The Benchers appreciate that members took the time to attend and debate the matters covered in the resolutions and will give serious consideration to the views expressed at the meeting as the Law Society continues to work toward advancing the public interest. ❖

## The Law Society's vision for legal aid: Second legal aid colloquium

GAPS IN LEGAL aid services in British Columbia continue to be of great concern. In order to bring focus to the importance of addressing these gaps, the Law Society's Legal Aid Advisory Committee, chaired by First Vice-President Nancy Merrill, QC, hosted a second legal aid colloquium on November 17, 2018.

Over the course of the day, the Legal Aid Advisory Committee heard from people who do not usually have the opportunity for their views to inform discussions about the structure of legal aid. Moderated by the Honourable Bruce Cohen, QC, 40 participants from Indigenous support services, immigrant and refugee settlement organizations, transition houses, mental health and addictions agencies, police, self-represented litigants and key partners within the justice sector shared how the lack of legal representation is impacting the marginalized and disadvantaged members of the public that legal aid and these social agencies serve. Their first-hand experience

enhances the understanding of the Law Society and of other justice system stakeholders attending the event of legal aid's importance to the broader community and will allow us to refine institutional thinking on legal aid and find effective ways to champion legal aid.

Many of these organizations have clients who are among the most vulnerable members of society, and these colloquium participants gave voice to the experience their clients face every day when trying to access justice. Hearing from these organizations allowed the Law Society, and other justice system stakeholders, to gain insight into the everyday challenges that members of marginalized groups face when seeking to access justice and the important role legal aid plays in helping them overcome these challenges.

Presentations were informative and constructive. While each speaker recognized the pressing need for greater legal aid funding, speakers also highlighted the

vulnerabilities of people who rely on a strong legal aid system to realize justice: immigrants and refugees struggling with language and cultural barriers; women and children who are living under the threat of family violence; prisoners who are cut off from access to information services; police who struggle to balance their mandate to serve and protect with the realities of poverty, mental illness and addiction; and self-represented litigants, who are often well-educated and middle class but whose economic resources are insufficient to retain counsel.

The colloquium served as a reminder that, at its root, access-to-justice problems are societal problems. Addressing these problems requires society to articulate what our shared values are and find ways to measure those values in a manner that invites the government to conclude that legal aid is not a cost, but an investment. ❖

## In brief

### JUDICIAL APPOINTMENTS

Justice **G. Bruce Butler**, a judge of the Supreme Court of BC, was appointed a justice of the Court of Appeal and a judge of the Yukon Court of Appeal. He replaces Justice Elizabeth A. Bennett, who elected to become a supernumerary judge effective February 1, 2017.

**Christopher J. Giaschi**, a partner at Giaschi & Margolis, was appointed a judge of the Supreme Court of BC in Vancouver. He replaces Justice Susan A. Griffin, who was appointed to the Court of Appeal effective February 6, 2018.

**Karen Horsman**, counsel at the Legal Services Branch of the Ministry of Justice of BC, was appointed a judge of the Supreme

Court of BC in Vancouver. She replaces Justice Paul J. Pearlman, who resigned effective May 7, 2018.

**Veronica Jackson**, senior counsel at the Ministry of Attorney General of BC, was appointed a judge of the Supreme Court of BC in Vancouver. She replaces Justice Heather J. Holmes, who was appointed Associate Chief Justice of the Supreme Court of BC on June 21, 2018.

**Steven Wilson**, a master of the Supreme Court of BC, was appointed a judge of the Supreme Court of BC in Kelowna. He replaces Justice Peter J. Rogers, who resigned effective September 1, 2017.

Acting Chief Judge **Melissa Gillespie** was appointed Chief Judge of the Provincial

Court.

**David Albert** was appointed a judge of the Provincial Court in the Fraser Region with chambers in Surrey.

**Georgia Docolas** was appointed a judge of the Provincial Court in the Fraser Region with chambers in Surrey.

**Jennifer Lopes** was appointed a judge of the Provincial Court in the Fraser Region with chambers in Surrey.

**Craig Sicotte** was appointed a judge of the Provincial Court in the Fraser Region with chambers in Surrey.

**Stuart Cameron**, a registrar of the Supreme Court of BC, was appointed a master of the Supreme Court of BC.

## Unauthorized practice of law

*UNDER THE LEGAL Profession Act, only trained, qualified lawyers (or articulated students or paralegals under a lawyer's supervision) may provide legal services and advice to the public, as others are not regulated, nor are they required to carry insurance to compensate clients for errors and omissions in the legal work or for theft by unscrupulous individuals marketing legal services.*

*When the Law Society receives complaints about an unqualified or untrained person purporting to provide legal services, the Society will investigate and take appropriate action if there is a potential for harm to the public.*

\* \* \*

During the period September 7 to November 15, 2018, the Law Society obtained four written commitments from individuals and businesses not to engage in the practice of law.

In addition, the Law Society obtained orders prohibiting the following individuals and businesses from engaging in the unauthorized practice of law:

On or about September 25, 2018,

**Carlos Diligenti**, d.b.a. **Diligenti Consulting Group**, of Vancouver, consented to an order permanently prohibiting him from engaging in the practice of law for a fee. He is prohibited from representing himself as a lawyer or in any other way that connotes that he is entitled or qualified to practise law and from commencing, prosecuting or defending a proceeding in any court on behalf of others. The Law Society alleged that Diligenti, in his capacity as a business consultant, provided clients with various legal services for a fee and prosecuted several proceedings in Provincial and Supreme Courts on behalf of litigants.

On or about October 9, 2018, **Vassy Bryant**, of Comox, BC, a.k.a. **Vassiliki Bryant**, d.b.a. **Vassy Bryant Immigration and Legal Consulting**, **Bryant Consulting** and "[www.bryantlegalconsulting.ca](http://www.bryantlegalconsulting.ca)" consented to an order prohibiting her from engaging in the practice of law, from commencing, prosecuting or defending a proceeding in any court on behalf of others, and from representing herself as a lawyer or any other title that connotes that she is

entitled or qualified to engage in the practice of law. The Law Society alleged that Bryant represented herself as a lawyer and purported to provide legal services to a client for a fee. Further, the Law Society alleged that she improperly referred to herself as a lawyer and offered legal services on her website. Bryant also consented to pay \$2,500 in restitution.

On November 9, 2018, Madam Justice Miriam Maisonville granted an injunction prohibiting **O'Neil Constantine Parchment**, of Port Alberni, from engaging in the practice of law, from representing himself as a lawyer, an advocate or otherwise capable or qualified to engage in the practice of law and from commencing, prosecuting or defending proceedings in any court on behalf of others. The court found that Parchment, a vexatious litigant, breached the *Legal Profession Act* by commencing and prosecuting habeas corpus proceedings on behalf of three incarcerated clients and by representing himself as a prisoners' legal advocate. ❖



## Law Society honours lawyers and law students who gave their lives in World Wars One and Two

THE LAW SOCIETY rededicated a plaque honouring Law Society members and students who made the ultimate sacrifice while serving our country in World Wars One and Two. In a ceremony in the entrance of the Law Society building, First Vice-President Nancy Merrill, QC spoke to an audience of Benchers and guests, pausing to recognize each of the 80 members and students.

The bronze “Honour Roll” plaque was originally commissioned in 1961 and lists each lawyer and law student killed during the two wars.

“With today’s rededication, all who enter the Law Society building will recognize and remember these brave members and students who fought and died protecting the freedoms that we enjoy today. May we never forget them,” said Merrill. ❖



FROM THE LAW FOUNDATION OF BC

## Law Foundation grants and fellowships

### PROJECTS GRANTS

FOR 2019 THE Law Foundation has established a projects budget of \$750,000 for one-time projects.

The Foundation encourages applicants and projects that reflect the diversity of British Columbia. Our working definition of diversity is:

Diversity includes age, different abilities, socio-economic level, education, ethnicity, language, family, gender, marital/relationship status, race, religion, work experience, geographic size and location, and sexual orientation.

Applicants must be non-profit organizations in BC whose proposed time-limited project falls within one or more of the Foundation’s five statutorily mandated areas of legal aid, legal education, legal

research, law reform and law libraries.

We are particularly interested in receiving innovative proposals that meet needs in the following areas:

- Aboriginal legal issues, including projects that advance the process of reconciliation with Canada’s Indigenous peoples;
- family law;
- legal research;
- mental health;
- the legal needs of children and youth;
- the legal needs of immigrants and refugees; or
- the legal needs of remote, isolated and underserved areas of the province.

The Foundation will consider proposals in other areas, as long as they fall within our program objectives.

Before preparing an application, organizations are strongly encouraged to contact us by February 22, 2019 to discuss proposed ideas.

The maximum amount available for each project is **\$50,000**. The deadline for applications is **12:00 pm, March 1, 2019**.

For more information about application guidelines and the assessment process, visit the [Law Foundation website](#).

### GRADUATE FELLOWSHIPS: DEADLINE IS JANUARY 4, 2019

A reminder that applications for graduate fellowship awards of up to \$15,000 for the 2019-2020 academic year must be received at the Law Foundation by **January 4, 2019**. ❖



## Mental health and wellness update: Law Society takes action to reduce stigma

LAST YEAR, THE Law Society made a commitment to improve education and awareness, as well as to support a culture shift in how the legal profession approaches mental health and substance use issues. As a result, the Mental Health Task Force was established in early 2018 to help coordinate and implement this commitment, with a focus on two key goals: reduce stigma around mental health issues and review the Law Society's discipline and admissions processes to consider how best to deal with mental health and substance use issues.

The statistics are startling and the

evidence is mounting: mental health and substance use issues are serious and pervasive concerns within the legal profession. Both US and Canadian [research](#) has documented that those in the legal profession experience mental health and substance use issues at alarmingly high rates, likely due at least in part to a culture and to stressors unique to the legal profession.

### THE WORK SO FAR

Over the last year, the task force has made considerable progress in increasing

its understanding of mental health and substance use issues through a comprehensive review of academic literature and educational materials. The task force also received information and insights from members of the legal community, other stakeholders and experts on mental health and substance use. The task force also consulted with other legal regulators, academics, advocates, law school administrators and physicians specializing in occupational addiction medicine, as well as other subject matter experts, including professionals from the BC Division of the

Canadian Mental Health Association and a team from the BC Centre on Substance Use.

Following this period of extensive research and consultation, the task force formulated a set of initial policy recommendations that include both educational and regulatory strategies.

## INITIAL RECOMMENDATIONS

The task force's initial recommendations fall into two key areas: educational strategies that increase awareness and understanding of mental health issues primarily within the Law Society itself, and regulatory strategies that focus on how these issues can best be addressed by the Law Society in the regulatory context.

Education is a central component that will allow the Law Society to improve its knowledge and understanding of and reduce the stigma associated with mental health and substance use issues. For this reason, the task force recommended that education efforts start within the Law Society itself, beginning with a focus on enhancing education and training for Law Society staff and Benchers. A focus on education will enhance awareness of mental health and substance use issues throughout the Society's various processes, providing staff with increased resources, tools and skills that will improve their ability to assist lawyers in a manner that both supports lawyers and protects the public interest.

Specialized training and education will also help develop the role of practice advisors, who currently assist lawyers and articulated students with practice and ethical advice on a range of issues. One of the task force's recommendations is to formally expand the role of practice advisors to include limited and appropriate advice about practice concerns that are related to mental health and substance use. For many of those experiencing mental health or substance use issues, the barriers to taking the first step of seeking support include uncertainty about whether help is available, where support can be found and what is involved. Moreover, addressing the needs of those seeking support with understanding and confidentiality must be paramount. With additional training and education, practice advisors have the ability to be another confidential access point for lawyers

to obtain support and resources. No information provided in consultations with practice advisors will be shared with any others within the Law Society.

The task force considered it important that the Law Society lead by example in becoming more educated and aware in respect of mental health and substance use issues, and in increasing the resources available to address these matters. However, to achieve the Law Society's ultimate goals, it will be necessary for lawyers, law firms and others within the legal community to join in these efforts.

To this end, one important step in the regulatory context is to ensure that law firms are also considering mental health and substance use issues and their role in addressing them. Therefore, the task force will consult with the Law Firm Regulation Task Force to discuss having law firms assess the resources they currently have in place and how they promote them to their lawyers. Law firms will not be required to take any steps, other than to self-assess the appropriateness of their current policies and resources for their particular circumstances.

Additionally, in order to create an atmosphere of greater support and transparency for lawyers and law students, the task force intends to re-evaluate, in conjunction with the Credentials Committee, the Law Society Admission Program enrolment application process.

The list of the initial policy recommendations is extensive and includes collaboration with other committees, development of a comprehensive communications plan, and provisions to the *BC Code* to remove stigmatizing language. For a further look at the initial 13 policy recommendations, please read the [Mental Health Task Force Interim Report](#).

## THE YEAR AHEAD

While these recommendations represent progress, they are only the first step in the task force's ongoing efforts. In the coming months, more work will be done to implement the approved recommendations. The year ahead will also see a further review of the Law Society's regulatory approaches, with research into a "diversion" or other alternative discipline process for lawyers experiencing mental health or substance use issues. Potential changes to the Law

Society's admissions process will also be explored, as well as the development of a statement of best regulatory practices for dealing with mental health and substance use issues.

In leading the development of the initial recommendations, Brook Greenberg, Bencher and chair of the Mental Health Task Force, stated that "healthier lawyers have the potential to be better lawyers, and supporting wellness within the profession will improve lawyers' practices, benefiting both practitioners and the public they serve." Essentially, there has never been a more important time for everyone in the legal profession to focus on substance use and mental health.

The Law Society, with support from the Mental Health Task Force, is committed to changing the way lawyers understand, talk about and respond to mental health and substance use issues, starting with the Law Society itself. The Law

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*The year ahead will also see a further review of the Law Society's regulatory approaches, with research into a "diversion" or other alternative discipline process for lawyers experiencing mental health or substance use issues.*

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Society will continue to encourage cultural changes within the profession in order to promote lawyer well-being while improving lawyers' practices.

The task force invites members of the legal community to send ideas, input or feedback by email to [mentalhealth@lsbc.org](mailto:mentalhealth@lsbc.org).

If you or someone you know may benefit from support, there are several confidential resources that can help. The Law Society funds personal counselling and referral services through LifeWorks Canada Ltd. Services are confidential and available at no cost to BC lawyers, articulated students and their immediate families. For more information on how to access LifeWorks' services, log in to the [member portal](#) or call 1.888.307.0590. The Lawyers Assistance Program also provides confidential support, counselling, referrals and peer interventions. For more information, visit [their website](#) or contact them at 604.685.2171 or [info@lapbc.com](mailto:info@lapbc.com). ❖

## Practice advice

by Barbara Buchanan, QC, Practice Advisor

### MOVING FIRMS OR RETIRING

LAWYERS TRANSFERRING TO another firm, moving to an in-house position or terminating a practice often ask questions about the requirements under the *BC Code* and Law Society Rules. They often call with one specific question. Once we start talking, other considerations arise. The frequency of these questions led to two key resources: [Ethical considerations when a lawyer leaves a firm](#) (Summer 2017 *Benchers' Bulletin*, pages 15 to 18) and [Winding Up A Practice: A Checklist](#), June 2017.

These resources assist lawyers in considering the many tasks and decisions to be made related to open files, closed files, undertakings, liens, wills, wills notices, fiduciary property, valuables, Registrar of Companies notices, records storage, trust accounts, trust funds, memberships, subscriptions, suppliers, insurance, Law Society requirements, law corporations, staff, office premises, furniture, equipment, libraries, public utilities, websites, domain names, email addresses and liabilities.

### RECENT SCAM ATTEMPTS AGAINST BC LAWYERS

Some recent scam attempts against BC lawyers are described below. For other scams and more detailed information, including the ubiquitous “bad cheque scam,” see [“Scams against lawyers persist – What are they and what can you do about them?”](#) in the Summer 2018 *Benchers' Bulletin*, pages 9 and 10.

#### iTunes gift card scam

Scammers have emailed BC law firm staff and made it appear that the sender is a lawyer at the firm. The scammers may have accessed and used a lawyer’s email account or they may have used a very similar email address with, for example, one letter different from the lawyer’s actual email address. Sometimes scammers find out when a lawyer is away from the office and use that information in the ruse. The scammer directs the law firm employee to purchase iTunes gift cards for a client. The scammer wants the employee to send a picture of the gift card to the scammer.

The picture would include the codes so the scammer could either purchase goods or sell the codes.

Consider implementing a policy of refusing to accept instructions by email regarding purchases and the movement of funds. Double-check email addresses. Require instructions to be provided in person or, at a minimum, by telephone from a number previously provided and independently verified. Ensure your computer system is secure.

For cybercrime risk management, see [Ten simple steps you can take](#) to protect your systems and your data. Consider your risks and review your [insurance coverage](#). Educate your employees about this scam and others. Refer to the information about [fraud prevention](#) and scams.

Below are two example emails from scammers:

**From:** [scammer, impersonating a legitimate lawyer]  
**To:** [law firm employee]  
**Subject:** Re: I will need your help today

I will need 6 qty of \$100 worth Apple iTunes Gift Card. Note that \$100 x 6 qty of iTunes Gift Card is needed. You should Scratch-off the back code and email a clear picture of all the codes if you can get the physical card at the store because am sending it out to a client.

Kindly make it happen with your funds, you will be reimbursed once am done. Thanks.

**From:** [scammer, impersonating a legitimate lawyer]  
**To:** [law firm employee]  
**Subject:** Are you in the office?

I’m in a meeting and I will not be able to talk to you on phone. I need you to run an errand for me at the store, this is really urgent and important. Do let me know if you can?

I need iTunes gift cards to send out to some client, can you confirm if we can get some as soon as possible? Will want you to make arrangements to

get the gift cards so I can advise certain product and denominations to procure.

Thank you.

#### Smartphone cheque deposit scam

A deposit scam previously reported in Nova Scotia and Manitoba has now been reported in BC. Below is a general description but the facts can vary.

A lawyer provides his or her paper trust cheque to a client for settlement funds. The client takes a photo of the cheque and deposits it using the client’s financial institution’s app. Before the mobile deposit clears, the client quickly returns the paper cheque to the lawyer, requesting that the lawyer issue two new trust cheques payable to two different people, totalling the same amount as the original cheque. The lawyer voids the original cheque and issues two new cheques. The client then takes a photo of the two new cheques and deposits them, doubling the amount paid out of the lawyer’s trust account.

Be cautious if someone asks for a replacement cheque. Contact your financial institution to find out if a mobile deposit was made and cleared, and discuss what steps you can take to protect yourself before issuing a replacement cheque. Consider contacting the Law Society’s Trust Assurance department ([trustaccounting@lsbc.org](mailto:trustaccounting@lsbc.org)) for advice as well.

#### Fake law firms and lawyers

Some BC lawyers have reported that scammers have replicated their law firm websites, giving the firm a new name (sometimes a name similar to a legitimate firm) and inserting a phony lawyer’s name and contact information. The scammers often ask individuals to claim, in partnership with the lawyer, that they are a beneficiary under a life insurance policy of a deceased client of the fake lawyer. This is an old scam; however, what is new is the use of a phony, replicated website. Below is an extract from one of the letters from a fake lawyer to a potential victim:

My name is [fake lawyer’s name]. I am a partner at [fake law firm].



It may surprise you to receive this letter from me, since there has been no previous correspondence between us. There is an unclaimed "permanent life insurance policy" held by our deceased client.

The transaction pertains to an unclaimed "Payable-on Death" ("POD") savings monetary deposit in the sum of Sixteen Million Eight Hundred Thousand Dollars (\$16,820,063) with a Canadian bank. The policy holder was one of our clients, [insert any name that includes the same surname as the addressee], who worked with Energy Company in Canada. He died in an accident in Vancouver Canada, Eight years ago. Since His death no one has come forward for the claim and all our efforts to locate His relatives in USA have proved unsuccessful. The insurance company code stipulates that "insured permanent policies" not claimed must be turned over to the abandoned property division of the state after 8 years.

Therefore, I ask for your consent to be in partnership with me for the claim of this policy benefit, in view of the fact that you share the same last name and nationality with the deceased. If you permit me to add your name to the policy, all proceeds will be processed on your behalf. I wish to point out that I want 10% of this money to be shared among charity organizations while the remaining 90% will be shared between us.

This is 100% risk free; I do have all necessary documentation to expedite the process in a highly professional and confidential manner. I will provide all the relevant documents to substantiate your claim as the beneficiary. This claim requires a high level of confidentiality and it may take up to thirty (30) business days, from the date of receipt of your consent.

Please contact me via: (email: [scammer's email address and phone number])

[fake BC lawyer's name]  
Attorney

If you are contacted by a lawyer you do not know, look up the lawyer's name independently for the correct name, firm name and contact information. Make sure that you are dealing with a legitimate person. If a person purporting to be a BC lawyer uses the word "attorney" in a letter's signature line, this is a red flag. "Attorney" is an American term for a lawyer that a BC lawyer normally wouldn't use unless called to the bar in the United States. The standard use of the word "attorney" in BC is an attorney under a power of attorney, not a lawyer. The word "attorney" is not used in the *Legal Profession Act*, the Law Society Rules or the *BC Code* as a substitute for "lawyer."

Search your firm's name and your own name regularly to check how your names are being used on the internet.

#### Reporting new scams

Report potential new scams against lawyers to Practice Advisor Barbara

Buchanan, QC at [bbuchanan@lsbc.org](mailto:bbuchanan@lsbc.org) or 604.697.5816. Reporting allows us to know what scams lawyers are experiencing. This helps us to notify BC lawyers about scams, provide guidance and update our website.

## CLIENT ID AND VERIFICATION RESOURCES

The Law Society of BC's Client Identification and Verification Procedure Checklist (which is current to September 1, 2018 and part of the larger *Practice Checklists Manual*), FAQs and an online course are based on Law Society Rules 3-98 to 3-109. In October 2018, the Council of the Federation of Law Societies of Canada (the coordinating body of Canada's 14 provincial and territorial law societies) approved amendments to the Federation's Model Rule on Client Identification and Verification and the Model Rule on Cash Transactions. In addition, the Council approved a new Model Trust Accounting Rule. The Federation took into account amendments to regulations under the federal *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, S.C. 2000, c. 17 (regulatory amendments came into force in June 2016, June 2017 and January 2018; further regulatory amendments are proposed) and Anti-money laundering and terrorist financing measures in Canada (September 2016) by the Financial Action Task Force.<sup>1</sup>

The Federation will forward the model rule changes and the new Model Trust Accounting Rule to the law societies for adoption. Changes to BC's rules require the Benchers' approval and, if approved, would affect parts of the current checklist and related resources. Accordingly, when you receive communications from the Law Society, keep abreast of rule changes.

Good client identification and verification practice consists of more than simply complying with the basic technical requirements of the rules and retaining records for the requisite period. Knowing one's client goes beyond this. Keep informed about common and new money laundering or terrorist financing schemes to prevent being duped. Unsavory clients may try to involve lawyers in sham litigation, improper real estate transactions, phony loans, and creating companies, trusts and charities for the purpose of money laundering or terrorist financing. Red flags may include the client's choice of lawyer (e.g., frequent

change of lawyer, engaging an inexperienced lawyer, engaging a lawyer from an unrelated jurisdiction). The client may be willing to pay higher fees than normal for little or no substantive legal services. Obtain information about the amount and source of funds related to the retainer (e.g., third-party funding; funds from high-risk countries; a large transaction, especially if involving a recently created entity).

Other things to consider include who the client is (e.g., whether the client is a politically exposed person, either domestically or for a foreign government).<sup>2</sup> The definition of "client" is broad.<sup>3</sup> Consider the type of service requested and whether the transaction involves a tax haven, high-risk jurisdiction or sanctioned country. Further federal legislation and regulations may also need to be considered. For example, might this involve a person whose assets are subject to regulations under the *Freezing Assets of Corrupt Foreign Officials Act*? Is the person's name (individual or entity) on the Lists of Names subject to the Regulations Establishing a List of Entities made under subsection 83.05(1) of the Criminal Code? Does the Canadian government have sanctions against the client under the regulations to the *Special Economic Measures Act*? The regulations impose various sanctions against designated individuals and entities. Is the individual a listed foreign national in the schedule to the regulations to the *Justice for Victims of Corrupt Foreign Officials Act* (Sergei Magnitsky Law)? You may be restricted or prohibited from providing some legal services (e.g., facilitating, directly or indirectly, a financial transaction related to property, wherever situated, of the sanctioned client).

Lawyers must assess whether they could be knowingly or unknowingly assisting a client in dishonesty, fraud or other

illegal conduct. This is an ongoing professional responsibility and, where there are signs of dishonesty, fraud or other illegal conduct, the lawyer should not act or withdraw from representation (Law Society Rule 3-109 and *BC Code* rules 3.2-7 to 3.2-8).

Some helpful resources that include case studies, red flags and common money laundering methods and techniques (although not written expressly for lawyers), are FINTRAC's Operational briefs and alerts and Typologies and Trends Reports. For example, Operational Brief: Indicators of Money Laundering in Financial Transactions Related to Real Estate (November 2016) includes a detailed table of indicators to help assess suspicious real estate transactions (e.g., buyer negotiates a purchase for the market value or more, requests that a lower value be recorded on documents and pays the difference under the table; loan is for more than market value; buyer pays with money from a third party unrelated to the transaction; buyer is from a jurisdiction with a weak anti-money laundering regime or a high level of political corruption). For a resource written for lawyers, see A Lawyer's Guide to Detecting and Preventing Money Laundering (October 2014).<sup>4</sup> Although not directed at Canadian lawyers, it provides lawyers with practical guidance about how criminals may try to use lawyers and how to minimize risks, and it includes case studies illustrating red flags that may arise when providing legal services.

If you have a practice question regarding client identification and verification, contact Barbara Buchanan, QC at [bbuchanan@lsbc.org](mailto:bbuchanan@lsbc.org). For questions regarding cash and accounting rules, contact [trust-accounting@lsbc.org](mailto:trust-accounting@lsbc.org).

1. The Financial Action Task Force is an independent intergovernmental body that develops and promotes policies to protect the global financial system against money laundering, terrorist financing and the financing of proliferation of weapons of mass destruction.

2. Section 9.3(3) of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*.

3. A "client" includes another party that a lawyer's client represents or on whose behalf the client otherwise acts in relation to obtaining legal services as well as an individual who instructs the lawyer on behalf of a client in relation to a financial transaction. See Law Society Rule 3-98.

4. Prepared by working groups of the International Bar Association, the American Bar Association and the Council of Bars and Law Societies of Europe.

## BANK HOLDS ON TRUST CHEQUES, CERTIFIED CHEQUES AND BANK DRAFTS

Did you know that financial institutions can and have placed holds on trust cheques, certified cheques and bank drafts?

A hold could be for as little as one day or for four or more days. During the hold, the financial institution seeks to verify that the funds are available from the account at the institution from which the financial instrument is drawn. If the financial institution determines that the financial instrument is counterfeit or altered, the institution and the lawyer may be protected from the fraud. However, a hold on a legitimate instrument can cause potential issues with closings and lawyers' undertakings.

Read our five risk management tips below to reduce the risk of a hold on trust cheques, certified cheques and bank drafts.

1. Know your client. Comply with the client identification and verification rules. Ask questions to obtain information about the client and the source of funds. Review rules 3.2-7 and 3.2-8 in the *BC Code* regarding dishonesty and fraud. See online information on [Fraud Prevention](#), including the bad cheque scam.
2. Review your account agreement with your financial institution and its hold policy.
3. Establish a relationship with your account manager.
4. Ask your financial institution what factors it takes into account when placing a hold on an instrument and find out what risks the institution is prepared to assume for any particular transaction. Financial institutions may take a number of factors into account when assessing whether to impose a hold, including:
  - the size of the firm and credit risk of the lawyer or law firm making the deposit;
  - the financial instrument's dollar value;
  - whether the instrument is drawn on an account from the financial institution's branch in Canada;

- whether the instrument is drawn on an account at another Canadian financial institution in financial difficulty;
  - whether the financial instrument is drawn on a foreign bank;
  - advance notice provided by the lawyer to the financial institution about the transaction and timing;
  - pre-established hold limits on a lawyer's trust account;
  - how the item was deposited (in person with a teller or other method).
5. Consider whether a wire transfer is preferable for a large transaction. Pursuant to the *Canadian Payments Act*, R.S.C., Payments Canada operates two electronic payment systems handling the electronic transfer of funds between participating institutions: the Large Value Transfer System (LVTS) and the Automated Clearing Settlement System (ACSS). Payments Canada states in its online information on LVTS [wire transfers](#): "Businesses choose wire transfers for critical, time-sensitive or large value payments since the beneficiary can access the funds on the same day the transfer is sent (often in near real-time), with full confidence that the payment will not be reversed for any reason." The ACSS electronic payment system does not provide the same assurances as LVTS, i.e., the deposit may be reversed or cancelled.

The Financial Consumer Agency of Canada website has information about cheque hold periods and access to funds for small and medium-sized businesses, including consumer rights. For information on the Canadian payments system, see the [Payments Canada](#) website (formerly the Canadian Payments Association).

When drafting or accepting undertakings, consider how a bank hold on a paper financial instrument or even a wire transfer could affect your undertakings. Review *BC Code* rules 2.1-4(b), 5.1-6, 7.1-3(a.1) and 7.2-11 to 7.2-13. Rule 7.2-11 provides detailed guidance in commentaries [1] to [6]. See section 84(6) of the *Legal Profession Act* regarding undertakings given by or on behalf of a law corporation. ❖

## Services for lawyers

### Law Society Practice Advisors

Barbara Buchanan, QC  
Brian Evans  
Claire Marchant  
Warren Wilson, QC

Practice advisors assist BC lawyers seeking help with:

- Law Society Rules
- *Code of Professional Conduct for British Columbia*
- practice management
- practice and ethics advice
- client identification and verification
- client relationships and lawyer-lawyer relationships
- enquiries to the Ethics Committee
- scams and fraud alerts

Tel: 604.669.2533 or 1.800.903.5300.

*All communications with Law Society practice advisors are strictly confidential, except in cases of trust fund shortages.*



**LifeWorks** – Confidential counselling and referral services by professional counsellors on a wide range of personal, family and work-related concerns. Services are funded by, but completely independent of, the Law Society and provided at no cost to individual BC lawyers and articled students and their immediate families.

Tel: 1.888.307.0590.



**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.

Tel: 604.685.2171 or 1.888.685.2171.



**Equity Ombudsperson** – Confidential assistance with the resolution of harassment and discrimination concerns of lawyers, articled students, law student and support staff of legal employers.

Contact Equity Ombudsperson Claire Marchant at tel: 604.605.5303 or email: [equity@lsbc.org](mailto:equity@lsbc.org).

## Conduct reviews

PUBLICATION OF CONDUCT review summaries is intended to assist lawyers by providing information about ethical and conduct issues that may result in complaints and discipline.

A conduct review is a confidential meeting between a lawyer against whom a complaint has been made and a conduct review subcommittee composed of at least one Benchers and one other senior lawyer. Conduct reviews are ordered by the Discipline Committee to address conduct that led to the complaint with a focus on professional education and competence. After the conduct review, the subcommittee provides a written report to the Discipline Committee, which may then direct that no further action be taken, that a citation be issued, that the conduct review be rescinded in favour of a different alternative disciplinary outcome or that the lawyer be referred to the Practice Standards Committee.

### ELECTRONIC FILING REQUIREMENTS

A lawyer disclosed his Juricert password to his assistant and allowed her to use his digital signature on documents filed electronically with the Land Title Office. The lawyer's conduct was contrary to his Juricert Agreement, Part 10.1 of the *Land Title Act*, Law Society Rule 3-96.1 and rule 6.1-5 of the *Code of Professional Conduct for British Columbia*. The lawyer explained that he was aware of his obligations with respect to his Juricert password. He mistakenly believed his conduct was appropriate, as his trusted assistant was acting on his specific instructions only after he had reviewed and signed hard copies of the documents. The lawyer changed his Juricert password and took steps to ensure he is the only one with access to his digital signature. (CR 2018-40)

#### *Compliance audits resulted in several other similar conduct reviews:*

A lawyer had been allowing his assistant to affix his digital signature to electronically file documents with the Land Title Office. The lawyer stated that he supervised his assistant while she filed the forms and that he placed a high degree of trust in her because she was also his spouse of many decades. The lawyer acknowledged his conduct was contrary to rule 6.1-5 of the *BC Code* and Law Society Rule 3-96.1. He changed his Juricert password and implemented office procedures to ensure only he can access it. (CR 2018-41)

A lawyer shared her Juricert password with her three assistants by having her digital signature installed on the assistants' computers. The assistants used the lawyer's Juricert password to affix her digital signature to documents before filing them with the Land Title Office, contrary to rule 6.1-5 of the *BC Code*. As soon as the auditor brought the error to her attention, the lawyer changed her Juricert password, and is now the only person who uses it. A conduct review subcommittee encouraged the lawyer to regularly read Law Society publications, to stay current and to avoid potential breaches of the Code and Rules. (CR 2018-42)

A lawyer's assistant was affixing the lawyer's Juricert digital signature to electronically file documents with the Land Title Office after the lawyer reviewed and approved hard copies of the documents. The lawyer explained to a conduct review subcommittee that he allowed his assistant to use his Juricert password to provide timely service when he was away from the office. He acknowledged that his conduct was in breach of rule 6.1-5 of the *BC Code*, Part 10.1 of the *Land Title Act* and Law Society Rule 3-96.1. The lawyer took immediate steps to change his practice and instituted procedures that comply with all regulatory requirements. (CR 2018-43)

A lawyer was allowing his assistant to use his Juricert password to affix his personal digital signature to electronically file documents in the Land Title Office, contrary to rule 6.1-5 of the *BC Code*. The lawyer allowed the assistant to prepare the paperwork for electronic submission, after which he would review and approve the documents and then instruct the assistant to affix his digital signature. The lawyer now understands that he must safeguard his Juricert password, which he has changed and personally affixes to each filing. (CR 2018-44)

### BREACH OF TRUST ACCOUNTING RULES

A compliance audit revealed that a lawyer failed to update his accounting records promptly and failed to render and deliver invoices before transferring funds from his trust account. His conduct was contrary to section 69 of the *Legal Profession Act* and Part 3, Division 7 of the Law Society Rules, including Rules 3-65(2) and 3-73(5). The rule breaches occurred during a period of several months when the lawyer, a sole practitioner, was without a bookkeeper. He has since engaged an accounting firm to maintain his records, prepare invoices and monthly reconciliations and comply with tax obligations. He now provides his clients with retainer letters that detail his procedure for invoicing and withdrawing funds from the trust account and follows a traceable accounting procedure. He has also completed the Small Firm Practice Course. (CR 2018-45)

### BREACH OF FINANCIAL RULES

An insolvent lawyer filed an assignment in bankruptcy, but failed to immediately notify the executive director in writing and deliver copies of all materials regarding his bankruptcy, contrary to Law Society Rule 3-51(1). The Law Society learned of the lawyer's insolvency and bankruptcy over a year later when it received the lawyer's Declaration of Insolvent Lawyer. A compliance audit later revealed that the lawyer opened a trust account while insolvent and without a second signatory that was approved by the executive director, contrary to Rule 3-51(3)(a). The audit further revealed that the lawyer signed 89 trust cheques in breach of Rule 3-51(3)(b) by not having a second signatory on the trust account who was approved by the executive director. The lawyer candidly admitted his misconduct to a conduct review subcommittee. He explained that his bankruptcy was very

stressful and financially devastating, but that he had no reason not to inform the Law Society about his ongoing situation. His failure to do so was because of oversight rather than any deliberate intent. (CR 2018-46)

### BREACHES OF UNDERTAKING

A lawyer was represented by another lawyer in a personal injury action. The relationship deteriorated over several months, causing the lawyer to terminate the retainer. The lawyer requested that she be provided with an invoice and all documents and files related to her matter. The now former lawyer responded that he would release the files if the lawyer agreed to several undertakings “in both your capacity as the client as well as in your capacity as a lawyer.” In part, the undertakings required the lawyer to pay disbursements accounts “forthwith” once the accounts were rendered, to impose an undertaking on her new counsel to hold the legal fees in trust until the matter was resolved, and to notify the former lawyer of the outcome of the case. The lawyer agreed to the undertakings, but later took issue with the disbursements accounts and did not pay the full amount promptly. The case eventually settled, and the former lawyer made several requests for the details of the settlement but did not receive a response. The lawyer believed the undertaking obliging her to notify the former lawyer of the outcome of her case was no longer applicable once she terminated her retainer with him. The lawyer’s conduct was contrary to rule 7.2-11 of the *BC Code*.

The lawyer did not appreciate that she accepted the undertakings in her capacity as a lawyer and as a client. She did not examine the wording of the undertakings closely and did not request any amendments to the wording. A conduct review subcommittee pointed out several problems with the undertakings: “forthwith” is open to different interpretations, the lawyer had no control over whether her new counsel would accept the undertaking, and the lawyer had an obligation to fulfill undertakings even if she felt they were inapplicable. In the future, the lawyer will read undertakings thoroughly to ensure she fully understands her obligations and will seek assistance from a practice advisor to clarify any uncertainties. (CR 2018-47)

In the course of acting for a purchaser in a real estate transaction, a lawyer breached an undertaking to pay a strata move-in fee upon completion. Employees of the strata contacted the lawyer several times over several months to request payment, but the lawyer failed to adequately respond to those communications. The lawyer’s conduct was contrary to rules 2.1-4, 5.1-6, 7.2-11(b) and 7.2-5 of the *BC Code*. After a complaint to the Law Society, the lawyer paid the move-in fee. The lawyer explained that he was handling 10 to 20 conveyances per month with no staff. He unsuccessfully tried to hire staff and had prioritized his other responsibilities over fulfilling this undertaking. He is now doing less conveyancing work and has a staff member assisting him. He is also considering a second bring-forward system. (CR 2018-48)

While acting for the sellers in two unrelated real estate transactions, a lawyer breached undertakings and failed to adequately respond

to communications related to the undertakings. In the first transaction, the lawyer provided undertakings to arrange for a special meter reading and to pay all outstanding utilities “in a timely manner” after closing. The lawyer’s staff provided the other party with property tax accounts more than a month after closing and the lawyer carried out the balance of what was required of her in the undertaking over the next three months. In the second transaction, the lawyer made an undertaking to provide the purchaser’s notary with a payout statement for two mortgages within five business days of the completion date. The lawyer received a payout statement on the same date as completion but a complication arose that required advice from outside counsel. The lawyer informed the notary of the status of the mortgages for the first time in a letter more than a month after the completion date. The notary emailed the lawyer three times in response to the letter with questions regarding the undertakings but did not receive a response. The lawyer’s conduct was contrary to rules 7.2-5 and 7.2-11 of the *BC Code*.

The lawyer acknowledged the importance of undertakings but disputed that she breached the undertaking in the first transaction. She maintained that her staff’s correspondence enclosing property tax accounts sufficiently discharged her undertaking. A conduct review subcommittee advised that the lawyer is responsible for ensuring undertakings are absolutely unambiguous, or amending them accordingly. Further, the lawyer must clearly and unambiguously communicate that she has fully discharged her undertakings. With respect to the second transaction, the lawyer believed the complication causing the delay would be a “quick fix,” then lost track of the deadline for the undertaking, relying on her paralegal to remind her. The subcommittee stressed that the lawyer is personally responsible for undertakings and should not rely on third parties to ensure they are discharged. The lawyer now records all dates related to undertakings on a spreadsheet that her paralegal reviews daily. She reviews all files with undertakings to ensure the wording is unambiguous and personally communicates that she has discharged her undertakings to the other party. The subcommittee recommended that the lawyer take advantage of practice advisors and mentorship opportunities, since she is a sole practitioner. (CR 2018-49)

### BREACH OF NO-CASH RULE

A lawyer accepted cash payments amounting to \$40,635 in multiple instalments of \$500 over a period of two and a half years. Further, the lawyer improperly issued cash receipts by misidentifying the payer. Rather than identifying the client as the payer, the lawyer identified the parties who provided the funds to her client as the payer. Her conduct was contrary to Law Society Rules 3-59(3) and 3-70(2) (the “no-cash rules”). The lawyer incorrectly believed the \$7,500 limit for cash payments applied to each instalment payment, rather than the aggregate amount. Before the client matter that led to this conduct review, the lawyer did not accept cash payments. She has reverted to her previous practice and re-familiarized herself with the no-cash rules. (CR 2018-50)

## QUALITY OF SERVICE

A lawyer drafted a loan agreement that would have required the borrower to pay a criminal rate of interest. The loan agreement stated that a compound monthly interest would be charged on a “face-value” principal amount that was higher than the amount actually advanced, under a lending arrangement referred to as “original issue discount.” The lawyer did not turn her mind to the effect of the compounding interest on the annual rate of interest. She also failed to consider that the loan agreement calculated the interest on the principal amount regardless of the actual amount advanced. She acted on instructions from her employer, a senior lawyer with experience in this area of law, and relied on him to review her work. The lawyer’s conduct contravened Chapter 4, Rule 6 of the *Professional Conduct Handbook* (now rule 3.2-7 of the *BC Code*), as she ought to have known her conduct assisted in a crime. Her conduct fell short of the quality of service required of her by Chapter 1, Rule 3 and Chapter 3, Rule 3 of the Handbook (now rules 2.1-3, 3.1-2 and 3.2-1 of the Code). A conduct review subcommittee explained that a lawyer drafting a loan agreement ought to know the resulting annual rate of interest. A lawyer must exercise independent legal judgment on every matter rather than rely on another lawyer’s judgment. (CR 2018-51)

In the course of representing a client in a real estate transaction, a lawyer initiated numerous legal proceedings seeking the same basic relief. The lawyer’s associate, acting under the lawyer’s supervision, obtained an order on short leave, which was set aside on the basis that the court was misled about whether service had been effected. The lawyer repeatedly threatened to seek costs from opposing counsel personally, and his tone in correspondence was uncivil. The lawyer allowed his client to file and serve pleadings as a cost-saving measure and followed the client’s instructions to initiate multiple proceedings without exercising his own legal judgment. His conduct fell short of the quality of service required under rules 3.1-1, 3.1-2 and 3.2-1 of the *BC Code*. The lawyer failed to obtain the proper order for his client and exposed his client to various costs awards. He acknowledged to a conduct review subcommittee that his conduct was inappropriate and has since taken a course on setting boundaries with his clients. He now confirms his recommendations to his clients and the clients’ willingness to follow his advice in writing. He understands that he must be able and willing to refuse client instructions when they are inappropriate. His correspondence now has a more respectful tone. The lawyer has reviewed the relevant procedures and substantive law and understands short-leave applications, other than by consent, are only appropriate in truly urgent circumstances. The subcommittee expressed concern that the lawyer did not fully accept responsibility for his associate’s conduct in failing to properly effect service and in misleading the court. (CR 2018-52)

## CLIENT IDENTIFICATION AND VERIFICATION RULES

A routine trust compliance audit revealed two instances in which a lawyer breached client identification and verification requirements. In two financial transactions involving long-standing clients, the

lawyer relied on prior verification of clients’ identities without ensuring he had retained copies of identification documents. His conduct contravened Law Society Rules 3-102 and 3-107(1). The lawyer has thoroughly reviewed the requirements of the Rules with his staff. He ensures client identification and verification documents are recorded on all files, regardless of the nature and age of his relationship with the clients. (CR 2018-53)

In another matter, a compliance audit identified four non-face-to-face financial transactions in which the lawyer obtained identifying information for his clients but failed to verify that information, as required by Law Society Rules 3-102 and 3-104. The lawyer acknowledged his errors and stated he did not notice the rule changes. A conduct review subcommittee advised him that the client identification and verification rules are an important part of the Law Society’s anti-money laundering and anti-fraud efforts. The subcommittee discussed the broader picture and the necessity of being seen by the federal and provincial governments as being effective and proactive in our anti-money laundering efforts, rules and enforcement. The lawyer has now reviewed the rules and is using the Client Identification and Verification Checklist for all new clients. The subcommittee recommended that, to prevent further rule breaches, the lawyer and his bookkeeper regularly review the rules and read Law Society publications. (CR 2018-54)

## CONFLICTS OF INTEREST

A lawyer acted for a long-standing client who was a director and a shareholder of several numbered companies while also acting as corporate solicitor for the companies when their interests diverged. This placed the lawyer in a conflict of interest, contrary to rules 3.4-1 and 3.2-3 of the *BC Code*. The long-standing client was a co-investor with the complainants in a business venture. The lawyer established holding companies for the joint venture and prepared various corporate instruments. In theory, the lawyer was the corporate solicitor for the numbered companies; in practice, he preferred the interests of his long-standing client and took instructions from him without confirming them with other interested parties. When a shareholders’ dispute broke out, the lawyer advocated for his long-standing client’s position.

A conduct review subcommittee advised that the lawyer failed to appreciate his duty of disclosure, candour and loyalty to his corporate clients. The lawyer did not advise parties to obtain independent legal advice. He did not take steps to create or insist upon a contractual framework (such as a retainer agreement) or corporate framework that would clarify, for the benefit of all, from whom he was entitled to obtain instructions. The lawyer has since completed an online ethics and commercial law course with a conflict of interest component and met with senior counsel to discuss the matter. He is exploring a system to ensure he puts into place proper retainer agreements and corporate frameworks if similar situations arise. The subcommittee urged the lawyer to take courses on corporate governance and corporate best practices. (CR 2018-55) ❖

## Discipline digest

BELOW ARE SUMMARIES with respect to:

- Gregory Neil Harney
- Gary Russell Vlug
- Steven Neil Mansfield
- Nida Chaudhry
- Christopher Russell James Cook
- James Peter Young
- Gerald Anthony Gordon

For the full text of discipline decisions, visit [Hearing Schedules and Decisions](#) on the Law Society website.

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### GREGORY NEIL HARNEY

Victoria, BC

Called to the bar: May 10, 1983

Discipline hearing: July 17, 2018

Panel: Craig A.B. Ferris, QC, chair, Laura Nashman and Sandra Weafer

Decision issued: September 21, 2018 ([2018 LSBC 25](#))

Counsel: J. Kenneth McEwan, QC for the Law Society; Henry C. Wood, QC for Gregory Neil Harney

#### AGREED FACTS

In 2010 Gregory Neil Harney was retained by a stockbroker who was in an employment dispute with her former employer. The former employer had agreed to pay the broker \$1 million in three instalments, the first two of which had been paid when the broker retained Harney.

The employment agreement included a provision that, if there were claims against the former employer arising from the broker's employment with the firm, the instalment would be made to counsel for the broker in trust until the claims were resolved.

Pursuant to the settlement agreement, the June 2010 instalment was paid to Harney subject to the trust condition that it not be disbursed until claims were settled.

Settlement of a dispute between the client and her former employer went to arbitration, and the arbitrator issued a decision confirming that there were outstanding claims relating to the client's former employment. The parties could not agree on whether and to what extent the funds could be paid out, and the matter once again went to arbitration, which resulted in an agreement that funds that were held back from the settlement be transferred to an unregistered brokerage account in the name of the client at a firm acceptable to both parties.

After the agreement was reached but before any paperwork had been finalized, or even drafted, Harney sent his client an email saying "I

will have the cheque ready Monday" and indicating he believed the matter to be resolved.

Two days later Harney sent the client two cheques payable to the client personally, equalling the amount held in trust by Harney.

The following day the client's former employer sent Harney an email outlining the terms of the agreement as the former employer saw them. Harney responded that he disagreed with some of the details. He did not disclose that he had already disbursed the money to his client.

A few days later Harney wrote to the former employer saying that the funds "will be moved" from trust to a brokerage account in the name of his client. Harney and counsel for the former employer could not come to agreement on the details of the settlement, and the matter again went to arbitration. The matter was resolved contrary to Harney's position.

Between January and June 2011 Harney and counsel for the former employer exchanged correspondence, including draft orders to move the holdback monies out of trust and into the brokerage account. At no time prior to June 2011 did Harney tell either the arbitrator or opposing counsel that he no longer held the funds in his trust account.

In October 2012 the successor company of the former employer asked Harney for a current statement of account for the trust monies, and Harney admitted that the monies had not been in his trust account since November 15, 2010.

#### ADMISSION AND DETERMINATION

Harney admitted that disbursing the monies to his client contrary to the trust condition constituted professional misconduct. He further admitted that he failed to disclose to the arbitrator or to opposing counsel that he had already disbursed the funds when he knew that that information was material, and that that constituted professional misconduct.

The panel found that this conduct amounted to professional misconduct. The panel considered that no loss was suffered because of the breach of undertaking, and that Harney did not receive a benefit from taking the monies out of trust. It concluded, however, that this did not change the fact that his actions constituted professional misconduct.

#### DISCIPLINARY ACTION

The Law Society sought, and Harney agreed to, a 30-day suspension.

In considering whether this was the appropriate disciplinary action, the panel considered that Harney had a lengthy practice history and by all accounts a good reputation within the bar and that, although he had two unrelated conduct reviews earlier in his career, he had no related professional conduct record.

The panel ordered that Harney:

1. be suspended for 30 days; and
2. pay the Law Society's costs, to be determined at a later date.

## GARY RUSSELL VLUG

Victoria, BC

Called to the Bar: August 28, 1992

Bencher review: April 10 and 11, 2018

Benchers: Sarah Westwood, chair, Jasmin Ahmad, Jeff Campbell, QC, Barbara Cromarty, Lisa Hamilton, QC, Steven McKoen and Mark Rushton

Decision issued: September 24, 2018 ([2018 LSBC 26](#))

Counsel: Henry C. Wood, QC for the Law Society; Gary Russell Vlug on his own behalf

### BACKGROUND

In 2012 the Discipline Committee authorized a citation containing 11 allegations of professional misconduct arising from complaints made against Gary Russell Vlug in relation to three different family law matters. A hearing panel found that Vlug had committed professional misconduct and ordered that he be suspended for six months and pay costs of \$20,000 (facts and determination: [2014 LSBC 09](#); disciplinary action: [2014 LSBC 40](#); discipline digest: [Winter 2014](#)). Vlug applied for a Bencher review of the hearing panel's findings.

A panel of Benchers upheld the hearing panel's findings of professional misconduct in relation to allegations 2 through 6 and allegations 10 and 11, but reversed the hearing panel's decision on allegations 7, 8 and 9. The review panel was split evenly on allegation 1 and, as a result, no review decision was reached on that allegation. The review panel reduced the suspension from six months to seven weeks and reduced the amount of costs (Bencher review: [2015 LSBC 58](#); discipline digest: [Spring 2016](#)).

Vlug filed a notice to appeal the review decision, and the Law Society cross-appealed to the BC Court of Appeal. The Court of Appeal found that the review board mistakenly concluded it was bound to apply a reasonableness standard of review, and that its misinterpretation infected the entirety of its decision. The court allowed both the appeal and cross-appeal and remitted the matter to a review board for a fresh review ([2017 BCCA 172](#)). Vlug also renewed an application to dismiss allegations 2 through 6 on the basis of delay.

Prior to the review, Vlug filed an application to admit fresh evidence, objected to an affidavit filed by the Law Society and sought to cross-examine the person who swore the affidavit. The admissibility of the evidence at issue is within the discretion of the review board, and it would not be appropriate for a Bencher at a pre-review conference to make a ruling regarding the admissibility of fresh evidence, including the affidavit tendered by the Law Society. Whether to permit cross-examination should also be determined by the review board. Any further material with respect to the fresh evidence application should be provided in advance of the section 47 hearing. ([2018 LSBC 01](#)).

Vlug filed another application prior to the review to introduce fresh evidence at the fresh review.

Prior to the original hearing of the citation, Vlug had responded to a notice to admit, signifying his agreement with facts contained in the notice and his acceptance of the authenticity of documents appended to the notice. With regard to one of those documents, a transcript of proceedings in the Court of Appeal, Vlug stated that he would admit

that it was an authentic document, but not that it was a complete record of what was done and said that day.

At this review, Vlug sought to introduce as fresh evidence his response to the notice to admit. This was intended to support his claim that there was what Vlug refers to as an "off the record" exchange between the court and opposing counsel that was not reflected in the court transcript.

At the original hearing of the citation, the hearing panel had noted that, although the transcript included references to breaks and adjournments in the proceedings, there was no reference to the court going off record. The hearing panel had accepted that the transcript was complete and found that the alleged "off the record" exchange had not occurred.

The Benchers did not accept that the fresh evidence bound the Law Society to Vlug's position that the transcript was incomplete and found that the proposed fresh evidence could not have affected the decision at the initial hearing.

The application to introduce fresh evidence was dismissed ([2018 LSBC 27](#)).

### DECISION OF THE BENCHERS ON REVIEW

Vlug's notice of review set out 10 grounds for review, resulting in five issues for the Benchers to consider.

#### **Did the hearing panel err with respect to the onus and standard of proof?**

The Benchers found that the hearing panel did not err in its application of onus or standard of proof.

#### **Did the hearing panel err in its findings of fact?**

The Benchers found no error on the part of the hearing panel in relation to the findings of fact supporting allegations 2 through 6.

The Benchers dismissed allegation 7, "as there is no evidence to support a finding of either misconduct or incompetence."

With respect to allegation 8, the Benchers agreed with the hearing panel that Vlug made a statement in pleadings filed in a Vancouver action that he knew or ought to have known was untrue.

In relation to allegation 9, the Benchers found that the hearing panel erred in finding that Vlug had committed misconduct and therefore dismissed allegation 9.

The Benchers found that, on the balance of probabilities, the hearing panel had not proven allegation 10, either on the basis of professional misconduct or incompetence, and therefore dismissed allegation 10

In relation to allegation 11, the Benchers found that, in preparing and commissioning an affidavit, Vlug ought to have known that it was false, and the hearing panel therefore made no error in its finding.

#### **Did the hearing panel err in applying the test for professional misconduct to each of the remaining allegations (2-6, 8 and 11)?**

The Benchers found no error with the hearing panel's finding of professional misconduct for each of allegations 2 through 6.

In relation to allegation 8, the hearing panel found that Vlug ought to have known that filings he made, and subsequent statements, were improper and misleading. The Benchers confirmed the hearing panel's finding of professional misconduct.

In relation to allegation 11, Vlug admitted to having prepared and commissioned an affidavit with a false assertion. The Benchers confirmed the hearing panel's finding of professional misconduct.

### **Did the hearing panel err in its analysis and conclusions with respect to Vlug's delay argument?**

Vlug argued that the hearing panel erred by failing to find that delay in the case resulted in unfairness to him. The Benchers dismissed Vlug's application to set aside the decision of the hearing panel on the issue of delay.

### **Did the hearing panel impose an appropriate disciplinary action?**

The Benchers found that, given that Vlug continued to maintain that he did not mislead anyone in relation to allegations 2-6, 8 and 11, they needed to provide Vlug with a strong message that his behaviour was inappropriate. The Benchers further found that they must communicate to the profession that deliberately misleading behaviour by a lawyer is unacceptable.

The Benchers ordered that Vlug be suspended for four months.

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## STEVEN NEIL MANSFIELD

Vancouver, BC

Called to the bar: May 14, 1993

Written materials: July 31, 2018

Hearing in writing ordered: August 8, 2018

Panel: Nancy G. Merrill, QC, chair, William Sundhu and Robert Smith

Decision issued: October 5, 2018 ([2018 LSBC 30](#))

Counsel: Kathleen M. Bradley for the Law Society; Steven Neil Mansfield on his own behalf

### AGREED FACTS

On November 16, 2016, Steven Neil Mansfield received a \$200,000 child-support payment from opposing counsel on behalf of a client and placed those funds in his trust account. On the same day, Mansfield withdrew the money from the trust account and purchased a bank draft in the same amount, payable to a third party not related to the client.

In October 2016 Mansfield received a \$5,000 retainer from another client and intentionally misappropriated those funds by depositing the money into his general account rather than his trust account when he was not entitled to those funds. On November 23 that client provided Mansfield with \$200,000, the result of a settlement in a family law matter. Mansfield paid the money into his trust account, and misappropriated almost all of that money by:

- writing cheques for \$20,000 and \$7,500 from his trust account and depositing that money into his general account; and

- writing a cheque for \$170,000 from his trust account, payable to the other client, who was now demanding the money that Mansfield had paid to the third party.

### ADMISSION AND DETERMINATION

Mansfield conditionally admitted to the violations, agreed that they constitute professional misconduct and consented to disbarment as the proposed appropriate disciplinary action.

In determining whether to accept the conditional admission and proposed disciplinary action, the panel considered Mansfield's explanation that his misappropriation of more than \$400,000 from two clients resulted from a gambling addiction. The panel concluded that a gambling disorder is not a mitigating factor justifying his conduct.

The panel accepted his admission of professional misconduct and concluded that anything less than disbarment would be wholly inadequate for the protection of the public and would fail to address the need to ensure public confidence in the integrity of the legal profession.

### DISCIPLINARY ACTION

The panel ordered that Mansfield be disbarred.

### TRUST PROTECTION COVERAGE PAYMENT

In every profession, there are occasionally members who are dishonest. Although not all professions or industries protect victims of their dishonest members, the legal profession in BC has, since 1949, provided financial protection to members of the public whose money has been stolen by their lawyer. If a claim is made against a lawyer relating to the theft of money or other property, trust protection coverage (TPC) is available under Part B of the lawyer's insurance policy to reimburse the claimant, on the lawyer's behalf, for the amount of the loss.

Based on the circumstances described in paragraphs [22] to [29] of *Law Society of BC v. Mansfield*, 2018 LSBC 30, a TPC claim was made against Mansfield and the amount of \$208,000 paid. Mansfield is obliged to reimburse the Law Society in full for the amount paid under TPC.

For more information on TPC, including what losses are eligible for payment, go to [Compensation: Claims for lawyer theft](#).

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## NIDA CHAUDHRY

Dubai, United Arab Emirates

Called to the bar: July 25, 2011

Written materials: July 10, 2018

Panel: Elizabeth Rowbotham, chair, David Layton, QC and Linda Michaluk

Decision issued: November 5, 2018 ([2018 LSBC 31](#))

Counsel: Alison Kirby for the Law Society, Nida Chaudhry on her own behalf

## AGREED FACTS

Between July 2012 and February 2014, Nida Chaudhry misappropriated or improperly withdrew client trust funds by making 13 withdrawals from her trust account, contrary to Law Society Rules.

On three occasions in 2013 and 2014, Chaudhry withdrew trust funds in purported payment of fees without first preparing a bill and immediately delivering the bill to her clients.

On one or more of 62 instances between 2012 and 2014, Chaudhry withdrew trust funds when there were insufficient funds held to the credit of the client on whose behalf the withdrawal was made.

Chaudhry failed to honour a trust condition imposed on her by opposing counsel on a real estate file.

Chaudhry affixed her electronic signature to a Form B mortgage filed with the Land Title Office when she did not have a copy of the mortgage in her possession.

Chaudhry failed to comply with Law Society Rules on more than 200 occasions between 2012 and 2014 by withdrawing funds from her trust account by way of one of the following methods that are not permitted: a bank draft, a cheque not marked "trust," electronic transfer without supporting documentation or, in payment of her fees, without making the withdrawal by cheque to her general account.

Between 2012 and 2014 Chaudhry failed to maintain her accounting records in accordance with Law Society Rules.

## ADMISSION AND DETERMINATION

Chaudhry conditionally admitted to the violations and agreed that they constitute professional misconduct, and consented to disbarment as the proposed appropriate disciplinary action.

The panel considered that the most serious misconduct was Chaudhry's intentional misappropriation of \$6,154.97 in client funds and that, except in extraordinary circumstances, the appropriate disciplinary action for the intentional misappropriation of client funds is disbarment. The panel found that the other instances of professional misconduct are also serious.

The panel considered as mitigating circumstances that no evidence suggested any client lost money as a result of Chaudhry's misconduct, that Chaudhry eliminated all of her trust shortages by means of a payment in personal funds and that Chaudhry was remorseful.

The panel approved Chaudhry's conditional admission of professional misconduct and concluded that disbarment falls within the range of fair and reasonable disciplinary outcomes in the circumstances of this case.

## DISCIPLINARY ACTION

The panel ordered that Chaudhry:

1. be disbarred; and
2. pay costs of \$700.

## CHRISTOPHER RUSSELL JAMES COOK

Castlegar, BC

Called to the bar: August 1, 2006

Voluntary withdrawal: October 31, 2018

Admissions accepted by Discipline Committee: November 8, 2018

Counsel: Kathleen M. Bradley for the Law Society; Christopher Russell James Cook on his own behalf

## FACTS

In the summer of 2015, Christopher Russell James Cook acted for a buyer of property that was jointly owned by a husband and wife (although the husband was deceased). The surviving owner had appointed a power of attorney to act on her behalf.

After filing the necessary paperwork with the Land Title Office, Cook realized the property included not just one lot, but two. The second lot had not been included in the transfer papers he had filed. Cook notified the notary acting on behalf of the seller, asking to have the seller or her attorney execute a transfer of the second lot. However, the seller had died, and the power of attorney expired with her death.

Cook then improperly filed certain forms with the Land Title Office. He also failed to advise the buyer and a second client, a bank, about the problems with the conveyance and the registration of the mortgage, and represented to the notary that he had witnessed the attorney's signature on a form when he had not. Subsequently, the buyer obtained independent legal advice and executed a form extending the mortgage to the second lot. At the buyer's request, Cook registered that form at the Land Title Office, and also consolidated both lots into one.

In May 2017, Cook told the bank that the mortgage had been extended to a second lot and provided a copy of a registered extension of mortgage.

## ADMISSIONS AND UNDERTAKINGS

Cook admitted that, on three occasions, he committed professional misconduct by causing forms to be filed with the Land Title Office that were purportedly executed by an individual with power of attorney for the seller when he knew or ought to have known that the power of attorney had expired, that the attorney had not executed the forms before Cook or at all, that Cook had not witnessed the attorney's signature and that Cook did not have the originally signed documents in his possession. The forms purported to transfer ownership from one joint tenant to another when both were deceased and attached a statutory declaration that had been created for a different purpose.

Cook also admitted that he committed professional misconduct by representing to a notary acting for the seller that he had witnessed the attorney's signature on a form when he had not.

In addition, Cook admitted that he committed professional misconduct by failing to advise his clients (the buyer and the bank) honestly and candidly of the status of the conveyance and the registration of a mortgage in favour of the bank, failing to notify his clients promptly

of the error or omission, failing to recommend that his clients obtain independent legal advice, and failing to advise his clients that he may no longer be able to act for them.

Cook became a former member of the Law Society of British Columbia as of October 31, 2018, when he resigned his membership in the face of discipline.

The Discipline Committee accepted Cook's admissions of professional misconduct and his undertaking that, for a period of six months commencing November 9, 2018, he will not:

1. apply for reinstatement to the Law Society of British Columbia;
2. apply for membership in any other law society without first advising the Law Society of BC in writing; or
3. 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.

## JAMES PETER YOUNG

Osoyoos, BC

Called to the bar: January 11, 1982

Panel: Craig A.B. Ferris, QC, chair, Ralston S. Alexander, QC and Don Amos

Decision issued: November 28, 2018 (2018 LSBC 34)

Counsel: Kathleen M. Bradley for the Law Society; James Peter Young on his own behalf

### AGREED FACTS

In 2009 James Peter Young became a partner in the firm where he had been an employee for nearly 20 years. The administration of the office was in the hands of his former employer. In 2011 Young became aware of the managing partner's failure to make required payments of HST, PST and GST remittances. In most instances, bookkeeping staff wrote the cheques but the cheques were not forwarded to the appropriate government agency. Despite being granted some relief from penalties by Canada Revenue Agency, by the fall of 2014 the firm owed in excess of \$300,000. By February 2017 the firm was current in its PST, GST and HST obligations.

### ADMISSION AND DETERMINATION

Young acknowledged that he should have been more diligent in efforts to ensure that the firm was compliant with its obligations to remit taxes collected from clients. He admitted to professional misconduct and agreed to a proposed disciplinary action of a fine of \$2,000.

The panel accepted Young's conditional admission of professional misconduct and proposed disciplinary action, both of which had been accepted and recommended by the Discipline Committee.

### DISCIPLINARY ACTION

The panel ordered that Young pay a fine of \$2,000.

## GERALD ANTHONY GORDON

Osoyoos, BC

Called to the bar: May 11, 1982

Written materials: November 5, 2018

Panel: John Waddell, QC, chair, Laura Nashman and Michael Welsh, QC

Decision issued: December 5, 2018 (2018 LSBC 37)

Counsel: Kathleen Bradley for the Law Society; Gerald Anthony Gordon on his own behalf

### AGREED FACTS

Gerald Anthony Gordon was in charge of financial management of the firm at which he was a partner, and during that time Gordon failed to remit taxes to the federal and provincial governments as follows:

- GST and interest due for taxes collected from April 1, 2009 to June 30, 2010;
- HST and interest due for taxes collected from July 1, 2010 to March 31, 2013;
- GST and interest due for taxes collected from April 1, 2013 to December 31, 2015; and
- PST collected from April 1, 2013 to December 31, 2014.

In total, over a period of approximately six-and-one-half years, the arrears amounted to over \$328,000 of GST/HST, and over \$98,000 of PST. During this time Gordon took partnership draws in excess of his entitlement.

### ADMISSION AND DETERMINATION

Gordon conditionally admitted to professional misconduct and agreed to a proposed fine of \$12,000. In considering whether to accept the conditional admission and proposed disciplinary action, the hearing panel took into account the large amount of money involved, the protracted length of time involved, the exposure of Gordon's partner to financial liability and discipline processes, and the deception involved in putting away tax remittance cheques in order to take excessive partner draws.

The panel approved Gordon's conditional admission of professional misconduct and proposed disciplinary action, both of which had been accepted by the Discipline Committee.

### DISCIPLINARY ACTION

The panel ordered that Gordon pay:

1. a fine of \$12,000; and
2. costs of \$750.❖

## ELECTED BENCHERS

### **President**

Miriam Kresivo, QC\*

### **First Vice-President**

Nancy G. Merrill, QC\*

### **Second Vice-President**

Craig A.B. Ferris, QC\*

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Pinder K. Cheema, QC  
Jennifer Chow, QC  
Barbara Cromarty  
Jeevyn Dhaliwal  
Martin Finch, QC  
Brook Greenberg  
Lisa Hamilton, QC\*  
Dean P.J. Lawton, QC\*  
Jamie Maclaren, QC  
Geoffrey McDonald  
Steven McKoen, QC\*  
Christopher McPherson, QC  
Philip A. Riddell, QC  
Elizabeth Rowbotham  
Karen Snowshoe  
Michelle Stanford, QC  
Michael F. Welsh, QC  
Sarah Westwood  
Tony Wilson, QC  
Heidi Zetzsche

## APPOINTED BENCHERS

Anita Dalakoti  
Roland Kreuger, CD  
Claire Marshall  
Mark Rushton  
Carolynn Ryan\*  
Guangbin Yan

## EX OFFICIO BENCHER

Attorney General David Eby, QC

\* *Executive Committee*

## LIFE BENCHERS

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Ralston S. Alexander, QC  
Rita C. Andreone, QC  
Satwinder Bains  
R. Paul Beckmann, QC  
Howard R. Berge, QC  
Kathryn Berge, QC  
Joost Blom, QC  
P. Michael Bolton, QC  
Thomas R. Braidwood, QC  
Trudi L. Brown, QC  
Mr. Justice Grant D. Burnyeat  
Bruce I. Cohen, QC  
Mr. Justice E. David Crossin  
Robert M. Dick, QC  
Robert D. Diebolt, QC  
Ian Donaldson, QC  
Ujjal Dosanjh, QC  
Leonard T. Doust, QC  
William M. Everett, QC  
Thomas P. Fellhauer  
Anna K. Fung, QC  
Leon Getz, QC  
Richard C. Gibbs, QC  
Carol W. Hickman, QC  
John M. Hogg, QC  
H. Allan Hope, QC  
Ann Howard  
Gavin Hume, QC  
Mr. Justice John J.L. Hunter  
Judge William F.M. Jackson  
Mr. Justice Robert T.C. Johnston  
Gerald J. Kambeitz, QC  
Master Peter J. Keighley  
Patrick Kelly  
Terence E. La Liberté, QC  
Peter Leask, QC  
Gerald J. Lecovin, QC  
Bruce A. LeRose, QC  
Jan Lindsay, QC  
Peter B. Lloyd, FCPA, FCA  
James M. MacIntyre, QC  
Richard S. Margetts, QC  
Master Robert W. McDiarmid  
David W. Mossop, QC  
Karen F. Nordlinger, QC  
Thelma O'Grady  
C.E. Lee Ongman, QC  
Richard C.C. Peck, QC  
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June Preston, MSW  
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