



# BENCHERS' BULLETIN

Keeping BC lawyers informed

## PRESIDENT'S VIEW

Helping the legal profession to be ready for a future that is already here / 2

## CEO'S PERSPECTIVE

Fostering respectful workplaces / 3

## NEWS

In memoriam / 4

An interview with Natasha Dookie, the Law Society's chief legal officer / 5

Unauthorized practice of law / 6

Washington's experience with limited license legal technicians / 6

The Law Society helps address concerns about sexual harassment in the legal profession / 7

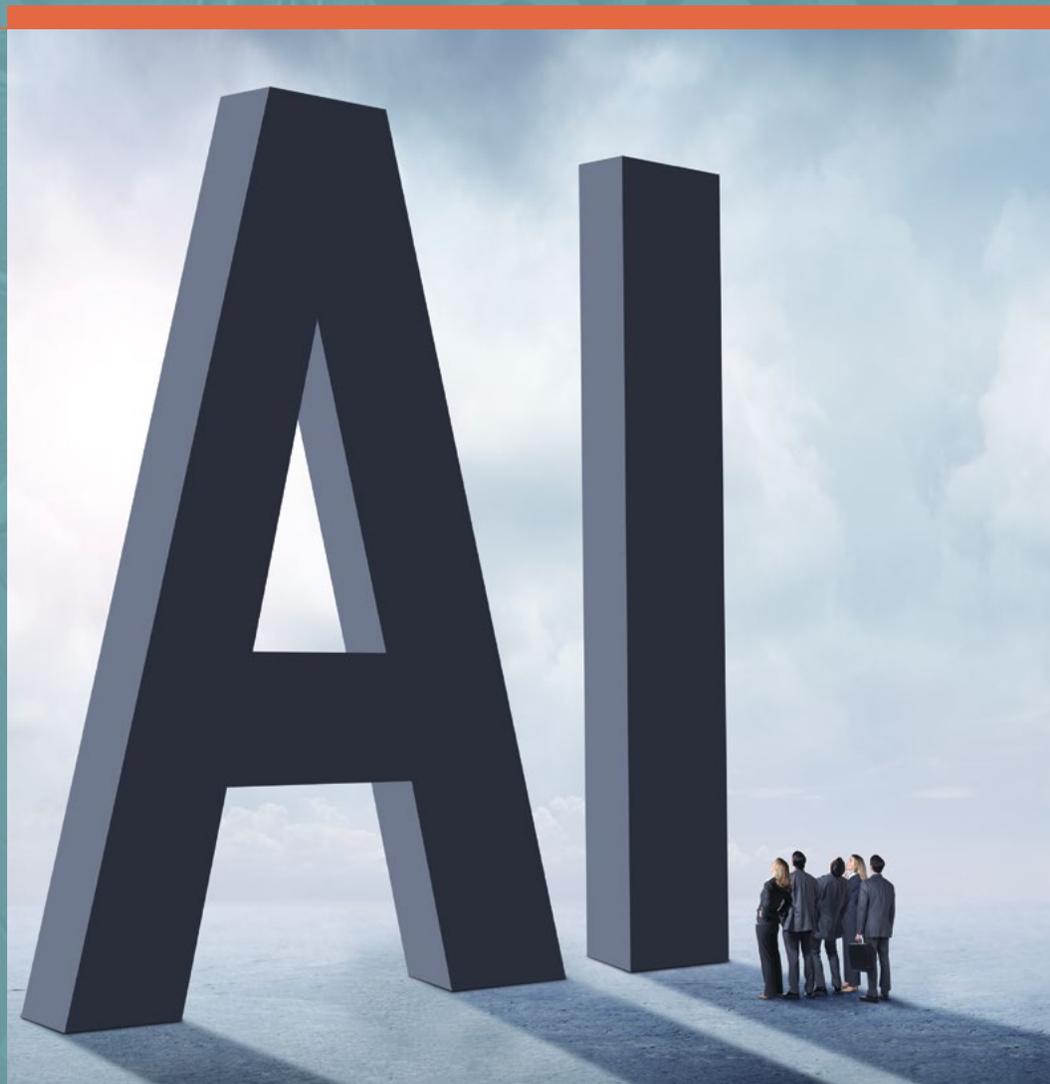
## PRACTICE

Practice advice / 11

## REGULATION of the PROFESSION

Conduct reviews / 15

Discipline digest / 17



## FEATURE

Innovation and the role of the regulator / 8



## Helping the legal profession to be ready for a future that is already here

by Nancy G. Merrill, QC

IT WOULD BE hard to ignore recent reports on the impact of innovative technologies on the legal profession. Nearly every business and legal journal has published articles on, or devoted entire editions to, describing the effect of artificial intelligence on the market for legal services. Yet the legal profession for the most part has been relatively unconcerned. To date, lawyers have been largely unaffected by the kind of disruption that has redefined other sectors and how they deliver services.

The feature story in this edition of *Benchers' Bulletin* presents a compelling argument that change is not only coming, but it is already here. Hundreds of entrepreneurial innovators are currently selling automated services to law firms, including legal research and automated contract reviews. Others target consumers directly, with automated services such as drafting wills and guiding customers through divorce applications. The questions that remain are not whether the profession is changing, but the extent to which it is changing, what it all means to clients,

those needing services, as well as lawyers, and the role of the regulator.

These are important questions that we cannot afford to put aside. Other sectors have shown us how change can be sudden. Within a year or two long-established business models can be turned upside down. We've seen how those who put off examining their role and how to best respond can be left on the sidelines.

In order to give focus to discussions at the Benchers table about the future of the profession, the Benchers agreed in January to strike a Futures Task Force. It will be responsible for investigating, reviewing and reporting on the future of the Law Society and the profession it regulates. This work will involve more than just technology, by anticipating changes in the broader legal landscape. But if you have not already given thought to how innovation is affecting your practice, the profession and the role of the Law Society, I invite you to read this issue's cover story and to share your thoughts with us. ❖

### 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.

Issues of the *Bulletin* are published online at [www.lawsociety.bc.ca](http://www.lawsociety.bc.ca) (see About Us > News and Publications).

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## Benchers' Bulletin, Insurance Issues and Member's Manual amendments moving to electronic form

ALL LAW SOCIETY publications are now transitioning entirely to electronic distribution. Currently, 97 per cent of members receive our publications in electronic form and at no cost.

Members who have indicated that they want to receive our publications on paper will still be able to print them. Issues of the *Benchers' Bulletin*, *Insurance Issues*

and *Member's Manual* amendment packages are published in PDF on the Law Society website (see News and Publications, Insurance Issues and Member's Manual).

Anyone who encounters issues with accessing the electronic versions may contact [communications@lsbc.org](mailto:communications@lsbc.org) for assistance. ❖





## Fostering respectful workplaces

by Don Avison

IN JANUARY 2017, the Law Society issued a discipline decision that was a first in British Columbia and one of only a few similar decisions in Canada. The decision confirmed that sexual harassment by a lawyer is professional misconduct because it expressly violates rule 6.3-3 of the *Code of Professional Conduct for British Columbia*, which states that a “lawyer must not sexually harass any person.”

The discipline decision was issued as the #MeToo movement began to shine a light on sexual misconduct in the workplace. It underscored the reality that the legal profession is not immune to this serious issue. It confirmed our need to focus on encouraging respectful workplace practices and preventing misconduct before it happens. Lawyers and legal staff whose skills are compromised by a

negative environment can’t conduct their best work.

Today, we offer several model policies on workplace harassment, respectful language and workplace equality on the [Law Society website](#). The [Respectful Policy Guide](#) provides examples of proactive steps that a law firm can take to maintain a positive, healthy environment where all employees treat each other with mutual respect. Law firms are encouraged to adopt the policies or use them as templates.

As well, the Law Society created the position of equity ombudsperson to provide confidential assistance to anyone who works in a law firm and needs help resolving matters of discrimination and harassment. Claire Marchant was welcomed as the in-house equity ombudsperson in 2017. Lawyers, articulated students, law

students and support staff of legal employers can contact her for assistance. The service is voluntary, confidential and free. Claire can be reached at [equity@lsbc.org](mailto:equity@lsbc.org) or 604.605.5303.

These resources are in place to support our goal for the legal profession to proactively address the issue of sexual harassment through proper policies and lawyer and staff training. It is essential that law firms build awareness among all firm employees of what is considered unacceptable conduct. As a profession, we can work to establish a culture that does not tolerate any forms of harassment, ensuring a safe and inclusive space for everyone. To gain a further understanding of how the Law Society is addressing concerns on sexual harassment, I encourage you to read the article on page 7. ❖

## In brief

### THANKS TO OUR VOLUNTEERS

The Benchers thank all those who volunteered their time and energy to the Law Society in 2018. Whether serving as members of committees, task forces or working groups, as PLTC guest instructors or authors, as fee mediators, event panellists or advisers on special projects, volunteers are critical to the success of the Law Society and its work.

For more on volunteer opportunities, and a list of people who served the Society in 2018, see [About Us > Volunteers and Appointments](#).

### ENHANCING LOGIN SECURITY OF THE MEMBER PORTAL

In order to improve the security of members’ personal information, the Law Society is taking steps to enhance the login to the online [Member Portal](#) by requiring

every member to have a unique username. Members who already have unique usernames (surnames) will not be affected. However, you will now be able to create a username other than your surname by logging into the Member Portal. Members who do not have a unique username will be prompted to create a new one when they attempt to log in.

The process of creating a unique username is easy and quick. However, if you encounter issues in updating your username, you are encouraged to contact Member Services at 604.605.5311.

### JUDICIAL APPOINTMENTS

Justice **Patrice Abrioux**, a judge of the Supreme Court of BC, was appointed a justice of the Court of Appeal.

**Karen F. Douglas**, a partner at Harper Grey LLP, was appointed a judge of the Supreme Court of BC in Vancouver. She

replaces Justice R.N. Brown, who elected to become a supernumerary judge.

**Amy D. Francis**, a principal at Legacy Tax + Trust Lawyers, was appointed a judge of the Supreme Court of BC in Vancouver. She replaces Justice G.B. Butler, who was appointed to the Court of Appeal.

**Dennis K. Hori**, a partner with Fulton & Company LLP, was appointed a judge of the Supreme Court of BC in Kelowna.

**Clarke Burnett** was appointed a judge of the Provincial Court in the Interior Region with chambers in Kelowna.

**Raymond Phillips** was appointed a judge of the Provincial Court in the Interior Region with chambers in Kamloops.

**Bruce Elwood** was appointed a master of the Supreme Court of BC in Vancouver.

**Steven Schwartz** was appointed a master of the Supreme Court of BC in Kelowna. ❖

# Law Society scholarships: Deadline to apply is March 31

THE LAW SOCIETY is pleased to offer two scholarships, the Indigenous Scholarship and the Scholarship for Graduate Legal Studies. Eligible students are encouraged to apply by March 31, 2019.

The **Indigenous Scholarship** is open to Canadian Indigenous students who are enrolled in full-time studies at the University of British Columbia, University of Victoria or Thompson Rivers University law schools. The scholarship may be awarded to one student (\$20,000) or divided equally between two students (\$10,000 per

student) at the discretion of the selection committee. The Indigenous Scholarship aims to enhance the representation of Indigenous lawyers in British Columbia by supporting their legal education.

Read more about the selection criteria and how to apply for the [Indigenous Scholarship](#).

The **Scholarship for Graduate Legal Studies** encourages and financially assists a law graduate to complete a full-time program of graduate legal studies that will benefit the student, the province and

the legal profession in British Columbia. Those graduating or who have graduated with a law degree from the University of British Columbia, University of Victoria or Thompson Rivers University are eligible to apply for the \$12,000 scholarship, as are other law school graduates who can show a real or substantial connection to BC. Applicants must demonstrate outstanding academic and other qualifications.

Read more about the selection criteria and how to apply for the [Scholarship for Graduate Legal Studies](#). ❖

## In memoriam

WITH REGRET, THE Law Society reports the passing of the following members during 2018:

Thomas G. Andison  
Kieran A.G. Bridge  
Christopher J. Butler  
Sandra Carter  
Laird R. Cruickshank  
John S. Davis  
Corey M. Dean  
Rav Dusanjh

J. Douglas Eastwood, QC  
David W. Garner  
Peter Golden  
W. Dallas Gordon  
John W. Green  
F.J. Scott Hall  
Michael D. Holland  
John D. Hope

James A. Horne, QC  
H. Bruce Kaun  
Gregory Lanning  
David Munroe Levis  
Marguerite E. Lockhart  
Philip J. MacAulay  
David S. MacKinlay  
Tona R.C. Maley

Gerald W. Massing  
Carolyn McCool  
Kenyon J. McGee  
Kathleen Packard  
George P. Rapanos  
Norman Severide, QC  
Joseph M.G. Shaw  
Gordon B. Shrum

Karla C. Shupe  
Karl W. Stahl  
Kenneth R. Steidl, QC  
David B. Thomas  
Kenneth J. Tyler  
Welf A.A. Von Dehn  
Peter D. Watts  
Leon C.L. Yue ❖



FROM THE LAW FOUNDATION OF BC

## Geoff White elected Chair of Law Foundation



The Law Foundation board of governors is pleased to announce that Geoff White of Kelowna was elected chair of the Law Foundation for a two-year term beginning January 1, 2019. White succeeds Eileen Vanderburgh, who was chair since 2017.

White has been a governor of the Law Foundation since 2015, when he was appointed as the Law Society's representative for the County of Yale. During that

time, he has served on the policy and planning, finance and administration, and class actions committees.

White's practice is focused on estate and charity law, and he has offices in Kelowna and Vancouver (with Clark Wilson LLP). He is a frequent presenter on estate law and is co-editor of the Continuing Legal Education Society's *British Columbia Probate & Estate Administration Practice Manual*. He was also a founding chair of the Okanagan chapter of the Society of Trust and Estate Practitioners, a past chair of the Canadian Bar Association's National Elder

Law Section, and past chair of the Kelowna Estate Planning Society. He earned his law degree from the University of Toronto in 1993.

The Law Foundation of British Columbia is a non-profit foundation. It receives and distributes the interest on funds held in lawyers' pooled trust accounts maintained in financial institutions. It funds projects and programs throughout BC that benefit the public in the following areas: legal education, legal research, legal aid, law reform and law libraries. ❖

## An interview with Natasha Dookie, the Law Society's chief legal officer



Brian Dennehy Photography

AS THE LAW Society's new chief legal officer (CLO), Natasha Dookie, settles into her role, she is looking forward to utilizing her extensive experience and, above all, bringing her immense passion for serving the public interest to her role.

As CLO, Natasha plays an important part in carrying out the Law Society's statutory responsibilities of discipline, professional conduct, custodianships and unauthorized practice, all while guiding others to best address the changing needs of the profession. We sat down with Natasha to find out more about her past experience and what she hopes to bring to her role as CLO.

### *How did you first get into law?*

I was born and raised in Alberta but made my way to the West Coast to start an undergraduate degree in science from the University of British Columbia. I decided to switch gears shortly after and completed a bachelor's degree in communications at Simon Fraser University. It was while completing my communications degree that I realized a career in law was the right path.

It only took one course in legal research and I was hooked. As a result, I went back to Alberta and obtained a law degree from the University of Alberta.

### *Did you always want to work in professional regulation?*

Coming out of law school, I originally had my sights set on litigation. However, with my desire to make a difference and my strong passion for social justice, I found myself gravitating more and more toward a career in the public sector and, in particular, professional regulation. While articling, I was lucky enough to learn about professional regulation. Most importantly for me, I felt right at home in that environment as it aligned with my core values.

### *What is your past experience in regulation?*

I first dove straight into it in 2008, when I served as discipline counsel with the Real Estate Council of BC. I later joined the BC College of Teachers (now the Teacher Regulation Branch of the Ministry of Education) as the director of professional conduct and legal counsel. In September 2012,

I was recruited to be the deputy registrar and chief officer with the College of Registered Nurses of BC, where I had oversight of registration, investigation and discipline processes. Finally, prior to starting here at the Law Society, I served as deputy registrar of the BC College of Nursing Professionals Inquiry and Discipline group. Now it feels like I have come full circle as I have the opportunity to work in professional regulation within my own profession.

### *What do you think are the biggest issues faced by the legal profession today? Is there anything you want to focus on first?*

Emerging issues such as money laundering and technological advancements are changing the future of the legal profession. One issue of importance is the stigma around mental health and substance use in the legal profession. I know that the Law Society is doing a lot of work right now to address this issue, and I commend that. One of my goals is to gain an understanding of the various regulatory approaches used in addressing mental health and substance abuse issues faced by lawyers. I know it is easy to aim big and lose focus, so I think it is important to stay grounded and concentrate on the things that most closely align with the Law Society's mandate using the resources we currently have.

### *You are clearly busy at work. How do you spend your free time?*

Nowadays it is rare that I get any free time — there are not enough hours in the day! I always loved to write music, travel and stay active with rock climbing and yoga. But for now, I make sure to get at least some exercise by chasing after my active three-year-old son and two playful dogs.

*The Law Society is pleased to welcome Natasha onboard. She will be a tremendous addition to the staff leadership group, and the entire profession will benefit from her record of unwavering commitment to the public interest as she takes the Law Society forward to its next stage of development.* ❖

## 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 November 17, 2018 to January 29, 2019, the Law Society obtained three 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:

**DZP Management Limited and AKL Management Limited, dba Family Law**

**Centre and [www.familylawcentre.com](http://www.familylawcentre.com), Daniel Rolin and Ian Rolin**, all of Toronto, consented to an order prohibiting them from engaging in the practice of law for a fee; from commencing, prosecuting or defending a proceeding on behalf of another; and from representing themselves as lawyers, a law firm or any other title that connotes that they are qualified or entitled to practise law. The Law Society alleged that these parties engaged in the unauthorized practice of law by providing legal advice and referring clients to the services of a lawyer in BC for a fee. The parties asserted that they have not provided legal advice to the public, and that they misunderstood a previous court order and the limitations under the *Legal Profession Act* with respect to operating a referral service in BC. They agreed to pay the Law Society \$5,000, representing costs and restitution to former clients.

**Wesley Robert Stevenson, aka Wes Stevenson, Kristine Loretta Stevenson, aka Kirsty Stevenson or Kristy Bieker, and Okanagan Divorce Solutions Inc., all dba [www.kelownadivorce.ca](http://www.kelownadivorce.ca), Kelowna**

**Divorce Mediation Services and Kelowna Divorce Mediation**, consented to an order prohibiting them from engaging in the practice of law for a fee; from commencing, prosecuting or defending a proceeding on behalf of another; and from representing themselves as lawyers or any other title that connotes that they are qualified or entitled to practise law. The Law Society alleged that Stevenson and Bieker engaged in the unauthorized practice of law by providing legal advice and preparing divorce documents for a fee, including separation agreements, parenting plans and court filings.

On January 23, 2019, Mr. Justice Joel R. Groves granted an injunction prohibiting **Peter Ross Mouck, aka Peter-Ross: Mouck and Peter Ross of the Mouck Family**, of Sooke, from engaging in the practice of law; from representing himself as a lawyer or any other title that connotes that he is qualified or entitled to practise law; and from commencing, prosecuting and defending proceedings in any court on behalf of others. The court awarded the Law Society \$2,700 in costs. ❖

## Washington's experience with limited license legal technicians

AT THE BENCHER meeting on March 1, two lawyers from Washington State delivered a presentation on the development of their limited license legal technicians to enhance family law services there. Steve Crossland, chair of the Washington Supreme Court LLLT Board, and Paula Littlewood, executive director of the Washington State Bar Association, explained how this licensed and regulated class of legal service provider originated, the education and training requirements to be credentialled, and the current status of the program.

The initiative originated with the recognition that in the US, the number of lawyers retiring exceeds the number of new law school applicants, while at the same time the demand for legal services is rising. This is no less the case in Washington State, which currently has just over

40,000 lawyers to serve a population one and a half times that of British Columbia. Compounding the shortage of lawyers was the fact that over 80 per cent of the public were already not getting the professional help they needed for their legal issues.

In 2012, the Washington State Supreme Court issued an order enabling the bar association to create a licence that allows trained professionals to practise law on a limited basis. In 2013 the court approved family law as the first practice area authorized for these limited license legal technicians.

Crossland and Littlewood explained that the bar association began by identifying four areas of unmet legal need before deciding to focus on implementing limited license legal technicians in the area of family law. Once the court approved limited

license legal technicians, it took the bar association approximately two years to draft rules to govern these service providers and to devise the appropriate education standards.

The education requirement has two parts: a core two-year program delivered by community colleges, followed by specific training in family law through courses delivered by the state's three university law schools. Applicants must also have 3,000 hours of practical experience.

Allowing for development of rules and education requirements, it was 2015 before students began entering the program. With the first cohort graduating in 2018, there are now 39 practising limited license legal technicians. The presenters estimate that another 100 to 200 students will enter the program this year. ❖

# The Law Society helps address concerns about sexual harassment in the legal profession

OVER THE PAST two years, there has been a significant shift in how the public talks about sexual harassment. The #MeToo movement was a game changer. Many felt for the first time that they were able to speak publicly about personal experiences with sexual harassment. The movement began by shining a spotlight on the entertainment and media world, but it has gone on to reveal sexual harassment in multiple sectors.

There is no reason to believe that the legal profession is immune. Since awareness was raised by the #MeToo movement, the Law Society has seen a modest increase in complaints. However, members of the profession might fear speaking out for a number of reasons, including fear of being isolated and stigmatized or concern about possible retribution.

The Law Society wants to ensure that those who have experienced sexual harassment, which is but one form of sexual misconduct, know their options and are aware of the support that is available to them.

## UNDERSTANDING THE PROBLEM

Sexual harassment is discrimination based on sex. It comes in many forms, including unwanted touching, flirtation, advances or propositions. It also includes such behaviour as leering, suggestive comments, persistent unwanted contact or attention after the end of a consensual relationship. Sexual harassment often involves abuse of power, which makes it more difficult for individuals to come forward.

A [2014 Angus Reid poll](#) concluded that three in 10 Canadians received unwelcome sexual advances, requests for sexual favours or sexually charged talk while at work. Women were almost four times as likely to have been harassed as men. That poll found that four in five victims never reported the behaviour to their employers. Many said they preferred to deal with the problem on their own. Others said they were afraid of losing their job or hurting their career. Some were reluctant to bring a complaint for fear of retaliation, while others feared having to testify at a hearing and being cross-examined on sensitive matters.

## The equity ombudsperson: A resource for lawyers and law firms



To assist in resolving workplace harassment and encourage fair workplace practices, the Law Society provides BC law firms with the services of an equity ombudsperson, who confidentially helps individuals and law firms resolve concerns regarding discrimination and harassment and promoting a healthy work environment.

Calls to the equity ombudsperson remain strictly confidential, protected by the same measures that safeguard the confidentiality of all calls to practice advisors. Lawyers, articulated students, law students and support staff of legal employers may contact the equity ombudsperson.

For free, confidential advice, contact the equity ombudsperson, Claire Marchant, at [equity@lsbc.org](mailto:equity@lsbc.org) or 604.605.5303. For more information about the program, see our website at Support and Resources for Lawyers > [Lawyer Wellness and Personal Support](#). ❖

A [2018 survey](#) of the legal profession done by the New Zealand Law Society found similar results: whereas 18 per cent of lawyers reported experiencing a form of harassment, just 12 per cent of those had formally reported it or made a complaint about it.

## FOSTERING POSITIVE WORK ENVIRONMENTS

Proactively addressing these issues starts at law firms themselves. A good starting point is a formal policy that describes unacceptable workplace behaviour and establishes a formal complaints process. The Law Society offers a [Respectful Workplace Guide](#) to help draft such a policy.

Ongoing training is also an important part of fostering a positive workplace culture. Regularly training all lawyers and staff on workplace harassment policies ensures that everyone is aware of unacceptable behaviour and of the available resources.

Leadership also plays an important

role in fostering a healthy workplace. Individuals in positions of authority are the ones who ultimately are the driving force behind a culture shift.

## TAKING ACTION

When sexual harassment does occur, there are several recourses. A respectful workplace policy provides a mechanism for resolving complaints internally. Additionally, individuals may make a complaint to the Human Rights Tribunal or even make a criminal complaint to the police.

A complaint may also be made to the Law Society. The *Code of Professional Conduct for British Columbia* specifically prohibits lawyers from sexually harassing any person and also includes broader provisions requiring that lawyers act honourably and with dignity, and that they be courteous and civil in the course of their practice.

*continued on page 14*



*This is the first in a series of features aimed at discussing emerging issues and changes that affect the future of the legal profession. In this issue, we are looking at innovation, disruption, and what these mean for the delivery of legal services and the role of the regulator. Future topics include new business models for legal service providers and innovative approaches to regulation.*

# Innovation and the role of the regulator

IN BARELY MORE than a decade, innovation has upended centuries-old business models in a number of sectors. It is not just the providers of the goods or services who are affected: all too often regulators of various industries have found themselves scrambling after the fact to consider their role and how they might have better protected the public. There is another, better way that begins with planning and being ready for what may come.

## REGULATORS PLAY CATCH-UP

Disruption in the media industry offers a stark example of regulators coming late to the table. For more than a century, the public relied on newspapers or radio and television broadcasters for their news. Newspaper and magazine publishers, as well as television and radio broadcasters, were for the most part trusted to enforce their own codes of conduct and editorial standards, while individuals were protected by libel and defamation laws. The long-established model suddenly came apart in the 1990s with the advent of universally available, and nearly free, digital distribution platforms. A vast unregulated digital-media industry quickly took hold. Suddenly anyone with a blog could call themselves

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*When one further advance is added to language recognition, automated legal services suddenly become not quite so far-fetched... what today's computers can also do is nearly instantly process vast databases and almost limitless variables not only to process language, but also to discern past patterns and predict future outcomes.*

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a "citizen journalist," and consumers are now checking Twitter and Facebook for the latest news from dozens of digital news publications, such as BuzzFeed, Huffington Post and Vice. Only now are regional, national and international regulators coming to terms with how to protect personal privacy and enforce standards of accuracy and accountability.

Similarly, it was barely more than a decade ago, in 2007, when a couple of Silicon

Valley entrepreneurs founded a company that would disrupt the short-term accommodation industry. Airbnb launched as a "hotel" company that owns no properties or rooms. Today, Airbnb is valued at US\$25 billion. By the time the city of Vancouver stepped in to regulate short-term rentals offered by companies like Airbnb, the city estimated that 6,600 housing units had already been diverted to the underground economy. The city's ad hoc reaction may have slowed the loss of much-needed housing stock, but it does little to protect the public. The recently enacted regulations require that each unit have smoke detectors and fire alarms, but they say nothing about operator qualifications and responsibilities, insurance requirements or dispute resolution mechanisms.

Uber and Lyft are "taxi" companies that own no cars and operate in cities around the world. Last fall, the province introduced ride-hailing legislation, nearly 20 years after Uber first offered its service in San Francisco. That company has since raised more than \$1 billion in funding. Rather than have a voice at the table when the technology was first introduced, the province is now playing catch-up, scrambling to apply local regulations to a powerful global force.

It is easy to argue that taxis and short-term rentals have little in common with professional services, but the financial sector offers an example a little closer to home for lawyers. Complex and highly regulated financial services are provided by professionals with specialized training and education. Automated online financial advisors, or "robo-advisors," have not yet made financial advisors redundant, but the writing may be on the wall for these professionals. Wealthy baby boomers will likely continue to pay hefty advisor fees, but millennials are more likely to spend a few minutes answering questions on a phone app, after which they receive a model investment portfolio suited to their age, income, risk tolerance and financial objectives. In Canada these automated services are lightly regulated: each service provider must have enough registered portfolio managers on staff to ensure that each client can potentially have a "meaningful

discussion" with an advisor. In 2016, Wealthsimple, Canada's largest online automated investment advisor, had five registered advisors serving 20,000 clients.

It may be easy to argue that legal services are in a class of their own. While financial advisors may be more comparable to lawyers than taxi drivers, finance is a question of numbers that computers are well suited to processing. Recent advances

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*By answering a series of simple questions through a user-friendly interface, users could contest a parking ticket, without professional help. Within two years, Browder's DoNotPay app had successfully contested 160,000 tickets, overturning more than US\$4 million in fines.*

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in digital technology, however, suggest that processing legal work may well be within the reach of today's computers.

## ARTIFICIAL INTELLIGENCE AND LEGAL SERVICES

A key reason that the legal profession has so far been relatively immune to disruption is that, unlike finance, the law is founded on language. In theory, the English language can be reduced to a lexicon of 200,000 or so words, governed by a complex but finite set of rules directing their possible combinations. Teaching computers to "understand" language has proven elusive.

Lawyers who had a technology-embracing colleague who was among the first to purchase the early speech-recognition software of the 1980s will recall the often comical results. In fairness, today there are still some glitches created by autocorrect. While a personal computer might be able to store a lexicon and convert rules of grammar into algorithms, the nearly infinite variables of human speech have been and still are beyond the computing capacity of the day.

But think about how far along things have come in just a few years. Computer storage capacity and processing speeds have grown exponentially year over year, to the point where language processing

has become a standard feature of today's computers and smart phones. More than 50 million North American households have installed Alexa, Siri or other voice-activated digital services. Anyone with an iPhone can tap the microphone icon at the bottom of the keypad in Mail or Notes and dictate their message instead of typing it.

When one further advance is added to language recognition, automated legal services suddenly become not quite so far-fetched. "Artificial intelligence" and "machine learning" are buzz phrases that are easy to dismiss. After all, it is obvious that computers cannot think or learn; all they can do is process ones and zeroes. But what today's computers can also do is nearly instantly process vast databases and almost limitless variables not only to process language, but also to discern past patterns and predict future outcomes.

## LEGAL-TECH ENTREPRENEURS

In September 2015, Joshua Browder, an 18-year old Stanford University student, decided that parking tickets were a cash grab unfairly targeting otherwise law-abiding

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*... LegalZoom and Rocket Lawyer have secured the financial backing of tech giant Google. LegalZoom helps its customers create an array of legal documents, including wills and living trusts, business formation documents, copyright registrations and trademark applications. Rocket Lawyer provides individuals and small businesses with online legal services, including incorporation, estate plans and legal document review.*

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citizens. Examining local bylaws and court outcomes, he concluded that the variables relating to successful appeals were fairly limited. In between preparing for his classes and studying for exams, Browder created an app for drivers in New York City and London, England. By answering a series of simple questions through a user-friendly interface, users could contest a parking ticket, without professional help. Within two years, Browder's DoNotPay app had successfully contested 160,000 tickets, overturning more than US\$4 million in fines. Emboldened by his success, Browder

is now adapting the digital platform to process claims for flight-delay compensation and to guide refugees navigating foreign legal systems. As with his DoNotPay app, he intends to offer these automated services online or via a smartphone, for free.

Contesting a parking ticket is a relatively simple legal matter requiring little in the way of legal judgment. The DoNotPay app does, however, offer proof that artificial intelligence can be applied effectively to legal matters. It also demonstrates that, where automated legal services offer quick, inexpensive and effective solutions, there will be a demand, and that nimble entrepreneurs will be able to respond quickly.

A number of legal-tech start-ups are already applying artificial intelligence to more complex legal tasks. Ross Intelligence, the brainchild of a group of University of Toronto students, is a legal research platform that sifts through legislation, case law and secondary sources to provide evidence-based answers to questions posed by its lawyer clients. Blue J Legal is a Toronto company that uses artificial intelligence to scan legal documents, case files and decisions to predict how courts will rule in tax decisions. A number of service providers, including Beagle and Exigent Group, apply digital processing to contract analysis.

Legal-tech entrepreneurs are not only targeting lawyers, but also providing automated legal services directly to consumers. Two of the biggest, LegalZoom and Rocket Lawyer, have secured the financial backing of tech giant Google. LegalZoom helps its customers create an array of legal documents, including wills and living trusts, business formation documents, copyright registrations and trademark applications. Rocket Lawyer provides individuals and small businesses with online legal services, including incorporation, estate plans and legal document review. Other entrepreneurs are targeting consumers looking for automated divorce services. Splyt in Canada and Wevorce in the US, for example, help users apply for divorce online.

These are just a few examples of entrepreneurs filling a demand for effective and relatively affordable automated legal services. With new entrants coming to the market all the time, it is impossible to say exactly how many companies are currently

selling automated legal services, but one US legal blog puts the number at 704.

## CONCLUSION

While lawyers are not likely to be replaced by computers anytime soon, there is no denying that innovation has already stepped in to fill a demand for quick, relatively inexpensive and effective automated legal

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*Regulators must also grapple with their role in this time of rapid change. They face essentially three options: they can fight innovation by prosecuting these new service providers as unauthorized practitioners, they can ignore innovation and assume that disruption cannot possibly happen in their profession, or they can embrace innovation and look for ways to bring it into the fold of regulated legal services.*

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services. As the technology continues to improve, the array of services offered, and the demand for them, will only grow. Lawyers and law firms will have to make some difficult decisions as they consider how best to adapt to these innovations.

Regulators must also grapple with their role in this time of rapid change. They face essentially three options: they can fight innovation by prosecuting these new service providers as unauthorized practitioners, they can ignore innovation and assume that disruption cannot possibly happen in their profession or they can embrace innovation and look for ways to bring it into the fold of regulated legal services.

Tech entrepreneurs are just the leading edge of innovation in the legal profession. Even if regulators were able to hold back the tide of entrepreneurial service providers, they would still have to contend with innovation on a host of other fronts, including new business models, new kinds of legal practitioner and new approaches to regulation itself. If recent history offers a lesson, it is that trying to stand in the way of innovation, or ignoring it, is not a winning strategy. Regulators can be proactive and take part in the innovation conversation today, or they can stand by and watch it pass them by. ❖

# Practice advice

by Barbara Buchanan, QC, Practice Advisor

## RECENT SCAM ATTEMPTS AND FRAUD PREVENTION

SOME RECENT SCAM attempts against BC lawyers are described below. For more information about other scams and fraud prevention, see previous *Benchers' Bulletins*, including [Summer 2018](#) (pages 9-10) and [Winter 2018](#) (pages 12-14), and the [Fraud Prevention](#) web page. Also see [Law Society Rules](#) 3-59, 3-70 and 3-98 to 3-102 and [Code of Professional Conduct for British Columbia](#) rules 3.2-7, 3.2-8 and 3.7-7(b).

### Cheque printing scam

A Vancouver lawyer reported that a scammer contacted at least three legitimate cheque printing companies in Canada to order new cheques for the lawyer's actual law firm account. Fortunately, each of the three companies contacted the lawyer to verify that the lawyer had actually placed the cheque order. He had not. The lawyer reported the scam to the Vancouver Police Department.

Consider contacting your cheque printing company to ensure that adequate safeguards are in place to prevent a scammer from ordering cheques in your name.

### Fake lawyers and law firms

Recently, scammers pretending to be Montreal and Vancouver lawyers have contacted BC individuals. In one situation, the scammer used the same name as a legitimate Montreal lawyer but with different contact information. The scam email address differed from the actual Montreal lawyer's address by only one letter so it could have been easily overlooked (however, sometimes a scammer spoofs a real email address so that the "From" line is an exact duplicate). The scammer wanted to trick a BC lawyer into dealing with him on a purchase and sale transaction in which he claimed that the parties had signed a letter of intent. In the second situation, the scammer did not use names of legitimate BC lawyers, but rather created a fictitious law firm website, HildeBrandt LLP, with a downtown Vancouver address.

The Law Society of Alberta issued an [alert](#) about a fake law firm, GSKS Law. A

person purporting to be Alberta lawyer David Mayer is not a lawyer.

BC law firms continue to report that their websites have been replicated by scammers, and they have had varying degrees of success in attempts to get the phony websites taken down (reported previously in the [Winter 2018 Benchers' Bulletin](#) (pages 12-13).

When you are contacted by someone purporting to be a lawyer, look up the lawyer independently from the information they provide you to verify the name, the law firm name and contact information. Every law society or equivalent usually has a directory that includes a lawyer's contact information and practising status.

### Phony real estate clients — access document link

An Ontario lawyer reported receiving an unexpected email from potential new real estate clients with an attachment that looked like the image below. The lawyer's anti-virus software prevented the link, which goes to a malware page, from opening. Keep your anti-virus software up to date and be cautious about opening links to any unexpected documents. For more information, visit the [Avoid a Claim website](#).



### The bad cheque scam and client ID and verification

The "bad cheque scam" has not abated. Posing as real clients, scammers try to dupe lawyers to deposit what appear to be genuine bank drafts, money orders, certified cheques or regular cheques into trust and then to electronically transfer funds

from trust before the scam is discovered. The ruses vary but usually involve a six-figure deposit. In most cases, scammers want assistance to collect on loans, settlement agreements or unpaid invoices; however, the scams also include solicitor's work such as purchase and sales transactions for large equipment, real estate conveyances or mortgages. Scammers often provide convincing supporting documents.

New phony client names are continually being added to the [bad cheque scams names and document list](#) on our website, all of whom have attempted to scam BC lawyers. Consider checking the names of potential new clients against the names on the list. *It is important to note that real people may have the same names as those on the list but are not suspected of wrongdoing. They could even themselves be the victims of scammers.*

In 2018, the following names were added: Scott Adams, Patsy Brooks Bernice, John Blom, Johan Boomsman, Laura Chao, Pui Cheung, Jin Chiu-Wong, Mathew Cummings, Mario De Silva, Roel Derksen, Jeff Ellison, Ayane Giichi, Rahul Godaba, Leon Harland, Craig Harvie, Patterson Huston, Chan Kai, Gerald Kaler, Marie Kim Kingston, Shunichi Kito, Erin J Knifong, Richard Koffman, Tim Lee, Sandra Lindstrom, Edward Mazin, Sophie Mason, Brooks Patsy, Patterson Houston Percy Jr., Liam Penwarden, Cheung Pui, Alfred Rennert, Cynthia Sang-hoon, Margaret Seifried, David Sheffield, KHIM Sokheng, Daniel John Spencer, Karen Tangyan, Ginko Tatsuya, Philippe Teirlinck, Peter Tung, Johan van der Walkt, Marcel van Eijdsden, Ben Van Uden, Dennis Vink, Chang Wang, David M. Willgress, Chris F. Williams, Mark Williams, Jurgen Wirtgen, Kiy sun Wong and Vivian Xu.

The following names have been added to date in 2019: William Brown, Shurlie Burke, Elaine Chao, Alna Jacob, Tokuaki Kojima, Sarah Laurie, Andrew White and Kwang Zhou.

At the same time, historically recognized scammers on our list, such as Harmony Young, continue to contact BC lawyers.

Phony clients commonly claim to be outside of Canada. Because some scams are sophisticated, lawyers may not find out that clients are scammers until after depositing a phony financial instrument. Lawyers who take shortcuts by, for instance, failing to follow the client identification and verification rules, are at risk of being a victim of the scam and having no insurance coverage under the mandatory policy.

Review the February 2018 [Discipline Advisory](#) to make sure that you understand the client ID and verification rules. Many [resources](#) are available, including a Client Identification and Verification Procedure Checklist, FAQs, a free online course and consultation with a practice advisor. See Appendix II of the checklist for a sample agreement with an agent to verify the identity of a client who is outside of Canada. Lawyers should choose the agent rather than letting a potential scammer choose one. For more information on the bad cheque scam, including steps to manage the risk, see [Bad cheque scam](#) on our website.

### Reporting scams

Report potential 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 notify BC lawyers about scams, provide guidance and update our website. In addition, consider reporting confirmed scams to the [Canadian Anti-Fraud Centre](#) and to your local police.

### TIMELY MORTGAGE DISCHARGES

The Canadian Bankers Association provides [guidelines](#) for solicitors to facilitate the discharge of mortgages that have been paid out as well as a list of [bank contacts](#) that solicitors can use to bring discharge delays of 90 days or more to a bank's attention. The association provides information about mortgage fraud and other scams on its [website](#).

Note that the Law Society has a 60-day rule for reporting mortgage discharge failures to the Law Society; see [Rules 3-95 and 3-96](#). Here is a link to the [reporting form](#).

### COMPLAINTS ABOUT CANLAW LAWYER REFERRAL SERVICE

In 2003, the *Benchers' Bulletin* reported



that the Law Society had received numerous complaints about CanLaw lawyer referral service ([www.canlaw.com](http://www.canlaw.com)). Specifically, members of the public and lawyers complained that they had received abusive and obscene emails from CanLaw. A lawyer recently advised us that, when he asked CanLaw to refrain from sending him emails, he received the following response: "... we have posted a public warning that you are deranged, a bully and a fool. Please refrain from breeding."

Some people have mistakenly assumed that CanLaw is in some way affiliated with or approved by provincial law societies or the Canadian Bar Association. CanLaw is not associated with any law society or with any bar association, and its principal is not a lawyer.

### CROSSING BORDERS WITH ELECTRONIC DEVICES – CANADA, THE US AND BEYOND

Lawyers, like anyone who travels across international borders, are subject to scrutiny by border officials. If a lawyer carries a client's privileged and confidential information on the lawyer's electronic device (including smart phones, laptops and USB sticks), the client's information may be compromised if the device is searched. As

a result, the Federation of Law Societies of Canada, with the assistance of Law Society policy and practice advice counsel, developed a new resource: [Crossing the Border with Electronic Devices: What Canadian Legal Professionals Should Know](#). The resource describes the risks of travelling with electronic devices when returning to Canada, when going through pre-clearance with US border officials in Canada and when travelling to the US and other destinations. As this resource was written for lawyers in all Canadian jurisdictions and Quebec notaries, it refers to the Federation's *Model Code of Professional Conduct* rather than local rules. BC lawyers are encouraged to refer to the following rules when reading the resource: [Law Society Rules 10-3 and 10-4](#) and [Code of Professional Conduct for British Columbia](#) rules 3.3-1, 3.3-2, 3.3-2.1 and 3.4-23.

The resource concludes with 15 suggestions to minimize the risks of compromising professional responsibilities and exposing a client's confidential information, excerpted here with permission:

1. Establish a policy about cross-border travel by legal counsel and staff carrying smart phones, laptops and other electronic devices that may contain confidential information of their

- clients. Lawyers and notaries have an obligation to maintain the confidentiality of their clients' information, and this obligation extends to ensuring that non-lawyer staff and each other person whose services the lawyer, notary or law firm has retained<sup>1</sup> also maintain clients' confidentiality.
2. Get help from information technology professionals regarding the security of your devices and alternatives to carrying potentially privileged information across the border. The safest way to travel is without any confidential client information. Some firms have separate clean laptops and phones available for cross-border travel.<sup>2</sup> It may be advisable to forensically clean confidential information from your device before travelling (including cookies, cache and browsing history).
  3. If you do not maintain separate devices for work and personal matters, separate your work and personal accounts on your laptop or smart phone, if possible, so that privileged information in one user account can be easily identified during any prospective searches.<sup>3</sup> Characterize sensitive information, clearly marking privileged documents as solicitor-client privileged. If documents are not clearly marked, the information may be at heightened risk of being examined by the Canada Border Services Agency (CBSA) or other border agencies. Whether or not privileged documents are clearly marked, it is important to speak up early during the examination process and claim privilege when appropriate.
  4. Carry identification that shows that you are a legal professional, such as your law society member identification card and a business card.
  5. Understand that certain characteristics of your travel and your behaviour make you more susceptible to closer examination by border agents. Based on research done by the BC Civil Liberties Association, you are more likely to be chosen to have your devices searched by the CBSA if, among other indicators, you have travelled to and from "high risk" destinations, are a single man travelling alone, exhibit nervousness or agitation, have multiple electronic devices (including hard drives), purchase a ticket to travel at the last minute or have "unusual" travel routes.<sup>4</sup>
  6. Put your device on airplane mode to stop information from transmitting,<sup>5</sup> and turn it off before approaching the border. When you turn your device on again, it will still be in airplane mode, and no new information will have been transmitted. CBSA and US Customs and Border Protection (CBP) officers are supposed to look only at information that is on your device, not use the device to access information that is in the cloud.<sup>6</sup>
  7. If asked by a border officer to hand over your electronic device, explain that you are a lawyer or Quebec notary and claim privilege (if the device may contain privileged information). If the officer is a CBSA officer, tell him or her about Minister Goodale's letter assuring that there are CBSA policies in place for solicitor-client privileged information (or even carry a copy with you and provide it to the officer).<sup>7</sup>
  8. If the CBSA demands your electronic device containing privileged information, request to see the senior customs officer at the place in which the search is to be conducted.<sup>8</sup> If the senior officer sees no reasonable grounds for a search, you may be discharged.<sup>9</sup>
  9. Do not be intentionally vague to border officers. Legal counsel should be prepared to explain the purpose of their travel and, if appropriate, their connection to a Canadian law practice, without divulging confidential client information. Do not rely on your electronic device to answer travel questions. Instead, have a printed itinerary to show to border officers.
  10. Communicate with your clients about what information, if any, they are comfortable having you travelling with across borders. Also consider that some clients may not permit their confidential information to be accessed on an electronic device outside of Canada or the disclosure of any information without their consent or a court order.<sup>10</sup>
  11. Bring less data with you.<sup>11</sup> If you use

## 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 counselors 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 articulated 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 articulated 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, articulated students, law students 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).

a cloud-based storage provider,<sup>12</sup> you may wish to delete cloud-based applications before crossing the border and reinstall afterwards. Similarly, client contact and calendar information can be deleted from smart phones and subsequently restored through internet services. Contact your IT professionals about how to securely reinstall deleted applications.

12. Use encryption and secure passwords. Use two-factor authentication to control access to your accounts. It will not deter initial access to your electronic device during a border search, but in the event that your electronic device is seized for further examination, protected accounts may not be accessible.<sup>13</sup>
13. If a CBSA officer retains or accesses your device, get a receipt and make sure that you have a detailed description of the device including make, model and serial number.
14. If you refuse to provide your device's password to allow examination or if there are technical difficulties preventing a CBSA officer from examining the device, the CBSA officer may detain the device for examination by an expert trained in forensic examinations.<sup>14</sup> Under the 2015 operational bulletin, until further instructions are

issued, CBSA officers have been advised not to arrest a traveller for hindering solely for refusing to provide a password; a restrained approach is to be adopted until the matter is settled in ongoing court proceedings.<sup>15</sup> It may be advisable to seek legal advice if you anticipate refusing to provide the password to your device to a CBSA officer.

15. Consider applying for a Nexus pass. Nexus is run jointly by the CBSA and CPB. While having a pass does not mean you will not be searched, low-risk, pre-approved travellers into Canada and the US enjoy expedited clearance at participating US and Canadian airports, land and marine border crossings.

For questions or comments, please contact Barbara Buchanan, QC at [bbuchanan@lsbc.org](mailto:bbuchanan@lsbc.org) or 604.697.5816. ❖

#### Endnotes:

1. Paralegals, accountants, bookkeepers, information technology professionals, etc. may have privileged information on their devices.
2. Barbara Buchanan, QC, "Client confidentiality – think twice before taking your laptop or smart phone across border" (*Bencher's Bulletin, Spring 2017*) online: Law Society of British Columbia at 11.

3. BC Civil Liberties Association, *supra* note 5 at 49.

4. *Ibid* at 24-25.

5. This will prevent any new incoming texts, emails, calls and other communications from your applications.

6. Canadian Border Services Agency, Operational Bulletin PRG-2015-31, Examination of Digital Devices and Media at the Port of Entry – Interim Guidelines, 30 June 2015, *supra* note 7; US Customs and Border Protection, CBP Directive No. 3340-049A, *supra* note 27.

7. *Goodale*, *supra* note 7.

8. CCA, *supra* note 2, s 99.2(3).

9. *Ibid*, s 99.2(4).

10. A client's needs and expectations are ideally explored at the beginning of the solicitor-client relationship and dealt with in the retainer agreement. Consider asking simple questions such as whether it is acceptable to share the name of the client and to disclose the purpose of the retainer.

11. BC Civil Liberties Association, *supra* note 6 at 42-44.

12. The Law Society of BC has a Cloud Computing Checklist (May 2017) and Law Society Rules 10-3 and 10-4 regarding cloud storage providers, standards and security.

13. *Supra* note 6 at 46.

14. *Customs Act*, RSC 1985, c 1 (2nd Supp), s 101.

15. *Supra* note 7 and *Customs Act*, s. 153.1.

### Sexual harassment ... from page 7

The Law Society's Professional Conduct group handles sexual harassment investigations in a fair, sensitive and respectful manner. In most cases, the investigating lawyer will meet in person with the complainant and other witnesses to conduct interviews and obtain the subject lawyer's response to the conduct concerns and gather relevant documentary evidence. The investigation concludes with an assessment of whether there is sufficient evidence of misconduct to warrant further disciplinary proceedings.

A complaint may lead to a citation. Investigations into sexual harassment have

also resulted in conduct reviews. A conduct review is a formal meeting ordered by the Discipline Committee and conducted by a two-person panel. It is a serious disciplinary outcome and becomes a part of a lawyer's professional conduct record. The complainant is not required to participate in a conduct review, and confidentiality is protected, as the summary of the review is published anonymously.

While the Law Society recognizes that there are barriers to filing a complaint, such as a fear of retaliation, Law Society Rule 3-3(1) and section 87 of the *Legal Profession Act* require that lawyers and witnesses maintain confidentiality throughout the complaint process. There

are several ways to file a complaint about professional misconduct involving sexual harassment. For details, see How to File a Complaint on the Law Society website. Questions on the complaint process can be directed to Gurprit Bains, manager, investigations, monitoring and enforcement at [GBains@lsbc.org](mailto:GBains@lsbc.org), or Karen Mok, manager, intake and early resolution at [KMok@lsbc.org](mailto:KMok@lsbc.org).

The Law Society takes sexual harassment complaints seriously, and aims to ensure that any inappropriate conduct is not repeated and that the public has confidence in the high standards the Law Society expects of the profession. ❖

## 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.

### LOAN TO CLIENT, CLIENT VERIFICATION AND FAILURE TO RESPOND TO THE LAW SOCIETY

A compliance audit revealed that a lawyer provided a loan to a client without ensuring that the client obtained independent legal advice, contrary to rules 3.4-28 and 3.4-34 of the *Code of Professional Conduct for British Columbia*. The lawyer believed the Code only required that a lawyer tell a client to seek independent advice. The audit also revealed that some of the lawyer's corporate files had incomplete client identification and verification, as required by Law Society Rule 3-103. The lawyer believed that he was substantially in compliance with the rule by keeping a master identification file for frequent clients. He has instituted new office practices for corporate files to have complete identification of directors in each file.

In addition, the lawyer's responses to the Law Society's inquiries were slow and incomplete, contrary to rule 7.1-1. He advised that the delay was because he was seeking permission from his clients to disclose their personal information to the Law Society. Client permission is not required for Law Society requests. The lawyer confirmed that he would be responsive to all future communications from the Law Society. (CR 2019-01)

### FAILURE TO MEET FINANCIAL OBLIGATIONS

A lawyer failed to remit PST and GST to the provincial government and to the Canada Revenue Agency on time, contrary to a lawyer's duty to promptly meet financial obligations under rule 7.1-2 of the *Code of Professional Conduct for British Columbia*. A conduct review subcommittee advised the lawyer that she has a fiduciary obligation to remit the payments to the appropriate government authorities. She advised that there was a miscommunication with her new accountant regarding the preparation of the GST forms and the amount payable. She did not provide any specific explanation for her failure to file PST returns and remit PST on time. The lawyer acknowledged the importance of meeting her fiduciary obligations to the government. She has taken the following steps: hiring a bookkeeper to review her financial record keeping and accounting and to calculate and remit GST and PST, hiring a part-time assistant, and regularly reviewing the CRA website to stay up to date on the status of her

GST account. (CR 2019-02)

Another lawyer failed to remit GST, PST and employee source deductions on time, contrary to a lawyer's duty to promptly meet financial obligations. The lawyer's practice primarily serves small-scale start-up companies that are at risk of becoming insolvent or bankrupt before paying their legal fees, and she had occasionally been unable to collect unpaid bills including PST and GST. The CRA had garnished her general account, which froze her operating line of credit. The lawyer appealed the required payment of the GST to the CRA on the basis that the outstanding accounts were uncollectable, but she lost the appeal. She acknowledged that she did not adequately monitor the timing of GST, PST and source deduction payment obligations. She has since paid her outstanding remittances to the government, is up to date on filings and has set up a schedule of payments for the outstanding GST obligations. A conduct review subcommittee noted that this was not a case of the lawyer obtaining funds from clients for the payment of GST and PST and then failing to remit those funds. The lawyer is winding down her firm and intends to practise part-time. She has contracted out her receivables to another firm for collection. (CR 2019-10)

### FAILURE TO FOLLOW JOINT RETAINER RULES, IMPROPER WITHDRAWAL AND BREACH OF CONFIDENTIALITY

A lawyer acted for several directors of a charity in a joint retainer. A conflict arose with one of the clients, and the lawyer improperly withdrew his representation of the client and advised him he would need to terminate his retainer but would continue to act for the remaining clients, contrary to rules 3.4-5(c) and 3.4-8 of the *Code of Professional Conduct for British Columbia*. The lawyer considered withdrawing his representation of the other clients due to the conflict of interest, but after the conflicted client swore a subsequent affidavit, he believed the potential conflict has been resolved. As well, the lawyer repeatedly copied third parties involved with the charity on confidential emails even after he was requested not to do so, contrary to rule 3.3-1 of the Code.

When a conflict of interest arises in a joint retainer that cannot be resolved, the lawyer should not act for any of the other joint clients. The lawyer agreed his conduct was inappropriate and acknowledged the need to improve his retainer letters for joint retainers and to ensure confidentiality of client communications. The subcommittee explained the principles of progressive discipline and that the lawyer should be aware that if he fails to improve his conduct, a citation may be issued in respect of further misconduct. (CR 2019-03)

### JURICERT PASSWORD

A compliance audit revealed that a lawyer disclosed his Juricert password to his assistant and permitted the assistant to affix his digital signature on documents electronically filed in the Land Title Office, contrary to rule 6.1-5 of the *Code of Professional Conduct for British Columbia*. The lawyer admitted that he gave his assistant his password to use on a few occasions

but thought it was acceptable as he was in the office at the time. He has taken steps to avoid future inappropriate conduct. He no longer does conveyancing work and is winding down his practice. (CR 2019-04)

## INCIVILITY

A lawyer and his client attended an unrepresented opposing party's home to review disclosure documents in a civil litigation action. The opposing party wanted to video record the lawyer and his client while reviewing the documents. The lawyer objected. When the lawyer and his client were leaving, the opposing party brought out a second video camera and began recording them. The lawyer knocked the video camera out of the opposing party's hand, and he and his client left the premises. The lawyer's conduct in acting in an uncivil manner was contrary to rules 7.2-1 and 7.2-4 of the *Code of Professional Conduct for British Columbia*. He acknowledged his inappropriate conduct and expressed regret about his behaviour. A conduct review subcommittee reminded the lawyer of his obligations under the Code to be courteous and civil with everyone he deals with in the course of his practice. He assured the subcommittee that he will not be drawn into similar circumstances in the future and that he will be consciously courteous and civil even when faced with provocative conduct. (CR 2019-05)

## ABUSE OF PROCESS

A lawyer representing a defendant in a personal injury matter received a supplemental list of documents shortly before an examination for discovery, which included previously undisclosed records. The lawyer believed that the documents had been deliberately withheld from the prior disclosure. He issued a notice to admit to the opposing party seeking admissions of wrongful conduct. When the admissions were not made, he issued a subpoena to opposing counsel. He then issued an improper offer to settle, suggesting that the amount of the offer had been reduced because of the alleged wrongful conduct of opposing counsel. His communications with opposing counsel were ill-considered and included uninformed criticisms. The lawyer breached his professional obligations to the court and to other lawyers, contrary to one or more of rules 2.2-1, 5.1-1, 5.1-2 and 7.2-1 of the *Code of Professional Conduct for British Columbia*. The lawyer acknowledged to a conduct review subcommittee that his actions were inappropriate. He stated that he gets "tunnel vision" close to trial, and he volunteered that he should step back and seek an objective perspective before jumping to conclusions. The subcommittee encouraged the lawyer to trust opposing counsel until there is a reason not to and asked him to consult with a Benchers or senior colleague if he has concerns about the propriety of another counsel's conduct. (CR 2019-06)

## BREACHES OF ACCOUNTING RULES AND FAILURE TO SUPERVISE STAFF

A compliance audit revealed several deficiencies in a lawyer's practice, contrary to his trust accounting obligations under Part 3, Division 7 of the Law Society Rules and rule 6.1-1 of the *Code of Professional Conduct for British Columbia*. The audit revealed one withdrawal from trust where a stale-dated cheque was reversed and reissued to the client after deducting a \$50 administration fee. An invoice was not prepared, and the cheque was signed by the lawyer. After the audit, a cheque for \$50 was issued to

the client. In 12 other instances, the lawyer signed trust cheques to clients for administrative fees in circumstances where the cheques became stale-dated and were reissued after deducting an administrative fee. The reissued cheques were not mailed to clients or cashed by the firm, and they were subsequently voided. The lawyer explained that his assistant prepared the trust cheques without his knowledge or instruction due to the administrative costs incurred in cancelling the stale-dated cheques and reissuing new ones. The audit also revealed eight instances where the lawyer's staff failed to issue cash receipts after the previous cash receipt book was not replaced. In short, the lawyer failed to properly supervise and instruct his staff, resulting in his breaching the trust accounting rules.

A conduct review subcommittee reminded the lawyer that funds held in trust belong to the client and can be properly disbursed only as authorized by the client. It is a lawyer's duty to properly train and supervise staff and to review supporting documentation or make appropriate enquiries prior to signing trust cheques. He has corrected the deficiencies in his accounting records, instituted office management policies with improved staff supervision and completed the Small Firm Practice Course to improve his knowledge of trust accounting rules. The subcommittee recommended that the lawyer schedule trust account reconciliations to ensure his bookkeeper is completing the trust reconciliations within the required timeframe. (CR 2019-07)

## BREACH OF "NO-CASH" RULE

A lawyer accepted cash in an aggregate amount of \$7,500 or more in relation to one client matter, contrary to Law Society Rules 3-54 and 3-59. While the lawyer was on holiday, his assistant deposited cash from a client into trust, for the purpose of paying the arrears on the client's mortgage. Upon his return to work, the lawyer prepared and signed a trust cheque payable to the bank's law firm in trust. The lawyer was not aware that the funds had been provided in cash until his bookkeeper brought it to his attention. The lawyer had not instructed his staff about the no-cash rule and had not implemented policies to prevent a breach of the rule. The lawyer should have enquired about the source of the funds before signing the trust cheque. He self-reported the breach on his trust report, readily acknowledged his responsibility and has taken steps to ensure it will not happen again. (CR 2019-08)

## QUALITY OF SERVICE

While representing a client in a dispute with a funeral home, a lawyer failed to take adequate steps to advance the file and failed to provide his client with the quality of service required by a competent lawyer under rules 3.1-2 and 3.2-1 of the *Code of Professional Conduct for British Columbia*. In response to 21 communications from the client, the lawyer met with the client, he responded once in writing and they spoke by telephone on several occasions. The lawyer sent the client a draft letter addressed to the funeral home to which the client provided her comments. The client file did not include documentation to show that the lawyer communicated with the client after receiving her comments or that he had sent the letter to the funeral home. Approximately six months later, the client learned that the letter to the funeral home had never been sent.

*continued on page 21*

## Discipline digest

BELOW ARE SUMMARIES with respect to:

- Pamela Suzanne Boles
- Robert Collingwood Strother
- Gerhardus Albertus Pypier
- Timothy Jeremy Vondette
- Barclay Wayne Johnson
- Sanda Ling King
- Pir Indar Paul Singh Sahota

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

### PAMELA SUZANNE BOLES

Vancouver, BC

Called to the bar: November 17, 1989

Written submissions on costs: April 24, May 14 and June 24, 2018

Panel: Bruce A. LeRose, QC, chair and Ralston S. Alexander, QC

Decision issued: August 23, 2018 ([2018 LSBC 24](#))

Counsel: Mark D. Andrews, QC and Gavin Cameron for the Law Society; Richard C. Gibbs, QC for Pamela Suzanne Boles

#### BACKGROUND

In 2012, a hearing panel determined that Pamela Suzanne Boles had committed professional misconduct related to her failure to report in writing four monetary judgments to the Law Society within seven days ([2012 LSBC 21](#)). The panel was petitioned, and the Law Society agreed, to re-open the hearing to permit additional evidence. The panel reversed its earlier finding of professional misconduct and determined instead that Boles had committed breaches of the Law Society Rules ([2016 LSBC 02](#)).

At review, the Benchers confirmed the hearing panel's decision that Boles's conduct did not support a finding of professional misconduct ([2016 LSBC 48](#)). The hearing panel ordered that Boles pay a fine of \$7,500, with costs to be determined ([2018 LSBC 03](#)).

The Law Society did not seek payment of costs from Boles and argued that, in ordering costs against the Law Society, Law Society Rule 5-11(8) confines panels to several specific circumstances not found in this hearing.

Boles argued that a literal reading of the Rules regarding costs against the Law Society "cannot be right; it cannot be what the Benchers meant in passing the costs rule." Boles submitted that a departure from the most recently published tariff of costs was appropriate and she was entitled to \$250,000 in costs.

#### DECISION

The panel considered that the Law Society Rules clearly state that costs may be awarded against the Law Society only in circumstances where

a citation is dismissed or rescinded. Since the Law Society did not seek costs, and the citation in this matter was neither dismissed nor rescinded, neither party is responsible for, nor entitled to, recover costs.

*An application for review was withdrawn by Boles.*

### ROBERT COLLINGWOOD STROTHER

Vancouver, BC

Called to the Bar: May 12, 1981

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

Court of Appeal: October 24, 2018 (Savage, Fitch and Fisher, JJA)

Written reasons: December 27, 2018 ([2018 BCCA 481](#))

Counsel: H.C. Wood, QC and L.F. Kushner for the Law Society; R.W. Grant, QC and S. Samdin for Robert Collingwood Strother

#### BACKGROUND

In February 2015, a hearing panel found that Robert Collingwood Strother committed professional misconduct by failing to disclose to a client his financial interest in a potential competitor and by failing to advise the client that previous legal advice needed to be reconsidered ([2015 LSBC 07](#); [2015 LSBC 56](#); [Summer 2016 Discipline digest](#)). Strother applied for a review of the hearing panel's decision. A review panel upheld the findings of professional misconduct and the imposition of a five-month suspension ([2017 LSBC 23](#); [Fall 2017 Discipline digest](#)).

Strother appealed the decision of the review panel to the Court of Appeal.

#### COURT OF APPEAL DECISION

The Court of Appeal dismissed the appeal. The court found that it was open to the hearing panel to conclude that Strother's conduct was motivated by his personal financial interest, rather than an honest but mistaken belief in the scope of his retainer agreement. In light of this finding, it was reasonable for the review panel to conclude that Strother's conduct constituted a marked departure from the standard expected of lawyers. The dissenting opinion in related civil litigation and the conduct of other lawyers at Strother's former law firm do not inform the reasonableness of the review panel's decision.

The review panel's reasons met the standard of justification, transparency and intelligibility. The five-month suspension fell within the range of reasonable outcomes and was not imposed to punish Strother.

### GERHARDUS ALBERTUS PYPPIER

Surrey, BC

Called to the bar: December 9, 2002

Ceased membership: January 29, 2015

Discipline hearing: December 4, 2017 and November 22, 2018

Panel: Dean Lawton, QC, chair, Haydn Acheson and Richard Lindsay, QC

Decisions issued: March 15, 2018 ([2018 LSBC 10](#)) and January 15, 2019 ([2019 LSBC 01](#))

Counsel: Carolyn Gulabsingh (facts and determination) and Kathleen Bradley (disciplinary action) for the Law Society; Gerhardus Pyper on his own behalf (facts and determination) and no one on his behalf (disciplinary action)

## PRELIMINARY MATTERS

A citation was issued against Gerhardus Albertus Pyper on March 23, 2015. At the November 6, 2015 hearing of that citation, Pyper submitted a notice of motion seeking an order that the citation be dismissed or stayed. On January 25, 2016, the panel adjourned the hearing of the motion, pending an appeal to the Court of Appeal by Pyper in connection with another citation and a motion to dismiss that citation (2016 LSBC 08). In oral reasons issued March 3, 2017, the Court of Appeal dismissed Pyper's appeal, finding that Pyper's objection was a collateral attack upon the suspension, that there was no merit to the allegation of bias, and that the Law Society had the jurisdiction to proceed with the citation. On July 31, 2017, another discipline panel confirmed it was the third panel to hear a very similar jurisdictional challenge from Pyper.

The panel concluded that Pyper's motion is a vehicle through which he was attempting to re-litigate his allegations of institutional bias against the Law Society and lack of jurisdiction in the panel to hear the citation, and that Pyper's motion was an abuse of process. The panel dismissed the motion (2017 LSBC 41).

## FACTS

Pyper was retained by a client to represent him on an impaired driving criminal charge and to bring a civil action against the client's physician seeking damages for alleged professional negligence. Both cases involved a question of the effect of a prescribed drug.

Pyper employed two associate lawyers in his law practice. One of the associate lawyers obtained instructions from the client to engage a pharmacologist as an expert witness for the criminal and civil proceedings. The associate lawyer contacted the expert by email to confirm the engagement.

The expert offered opinion evidence in both the criminal and civil proceedings. The criminal trial took place in January 2013 and the civil action trial took place in April 2013. The client was convicted following the criminal trial. Following the civil trial, judgment was reserved for approximately one year, and the client's action was dismissed with costs.

In February 2013, the expert sent a bill in the amount of \$7,748 for his work on the criminal trial. Pyper's associate lawyer wrote back enclosing partial payment of \$5,600 toward the bill and stating that the client required a breakdown of the charges prior to paying the balance.

In May 2013, the expert sent another bill in the amount of \$5,998 for his work on the civil trial. In his cover letter, he stated he put in many more hours than the bill reflected and proposed an alternate form of payment — a research donation of \$5,500 to the University of British Columbia. He offered to speak with Pyper about payment of the bill.

The expert wrote to Pyper three times, in June, July and September 2013, to follow up on the outstanding balance from the February bill and the May bill. The expert complained to the Law Society in October 2013. The expert wrote to Pyper again in December 2013 offering to discuss his

outstanding bills and informed him that, though he had made a complaint to the Law Society, he preferred to deal with Pyper directly on the bills. There is no evidence Pyper responded to any of those four letters.

The Law Society contacted Pyper three times, in February, March and April 2014, to request a written response to the complaint. In the April 2014 letter, the Law Society warned that, if he did not respond, the matter would be referred to the Discipline Committee for failure to respond to Law Society correspondence.

Pyper responded to the Law Society's letter in April 2014. He stated that his client was extremely upset about the expert's testimony and that he did not have authority to pay the expert until the decision was rendered in the civil trial. He said he intended to contact the expert again and apologize for the situation. Pyper did not write to the expert until June 2014. In the letter, he stated his client was unhappy about the expert's testimony and he had instructions from the client to wait until the decision of the court before further instructions on payments to the expert.

The expert was called as a witness at the discipline hearing. He said that at no time did Pyper convey to him that the client would pay his accounts directly, nor did Pyper communicate that there was a problem with his report or testimony at the trials. He said he received no payment for his invoices and the unpaid amounts totalled \$8,192.

Pyper said he did not retain the expert himself, but his associate did so. He stated he would have paid the expert's account regardless of the results of the civil trial; however, he said that the Law Society had full control over his trust account and his general account since May 2014. He was suspended from practice in June 2014, and his practice was placed into custodianship. As a result, he had not paid the expert's invoices.

## DETERMINATION

In the absence of evidence on the status of Pyper's general and trust accounts, the panel found that, on a balance of probabilities, his failure to pay the expert's bills did not constitute professional misconduct. It dismissed the allegation of professional misconduct for his failure to pay the bills, in the first part of the citation.

The panel found that Pyper's failure to respond to the expert's letters, in the second part of the citation, demonstrated a marked departure from the conduct the Law Society expects of lawyers and constituted professional misconduct.

## DISCIPLINARY ACTION

The panel considered Pyper's extensive professional conduct record and concluded that it demonstrated an ongoing unwillingness to address his failures to meet the minimum accepted standards of legal practice. As an aggravating factor, the panel considered Pyper's accusation of "institutional bias" against the Law Society and concluded that rehabilitation and remediation would be unlikely.

The panel agreed that a suspension was appropriate and would be consistent with the principle of progressive discipline, the need for specific and general deterrence and the protection of the public.

In determining the effective date of suspension, the panel considered that Pyper had ceased membership in the Law Society in January 2015 and that, in 2017, a hearing panel considering another matter had ordered a

suspension immediately upon reinstatement should Pyper ever be readmitted to the Law Society. A further consideration was that a previous panel had ordered that, should he ever be reinstated, Pyper abide by any conditions imposed by the Practice Standards Committee.

The panel ordered that:

1. Pyper be suspended for three months, commencing the first business day following the completion of the suspension ordered in 2017;
2. following the suspension, Pyper must not practise law except in a setting and in a capacity approved by the Practice Standards Committee and on such conditions as that committee might fix; and
3. Pyper pay costs of \$9,606.88.

## TIMOTHY JEREMY VONDETTE

Vancouver, BC

Called to the bar: May 19, 1986

Discipline hearing: October 2, 2018

Panel: Sarah Westwood, chair, Gillian Dougans and Carol Gibson

Decision issued: December 3, 2018 ([2018 LSBC 36](#))

Counsel: Sarah Conroy and Tara McPhail for the Law Society; Michael Shirreff and Jennifer Crosman for Timothy Jeremy Vondette

### AGREED FACTS

A client retained Timothy Jeremy Vondette to handle the client's claims with respect to four motor vehicle accidents in three BC Supreme Court actions. A jury ultimately awarded the client \$307,159 in damages.

Vondette received \$307,159 in payment of the damages award, deposited the funds into trust, and disbursed the funds to the client and to his own law corporation in payment of fees.

Vondette drafted bills of costs and communicated with opposing counsel regarding the outstanding costs and disbursements payable. A pre-hearing conference resulted in an order setting out steps in respect of a costs hearing before a registrar.

In subsequent years, Vondette took only limited steps to advance the costs issue. Vondette's client tried repeatedly to contact Vondette, and Vondette did not respond in any substantive manner.

After the client complained to the Law Society, Vondette took steps to retain more experienced counsel to help finalize the materials necessary to have the costs issue adjudicated by the registrar. Vondette finally obtained a hearing date for the costs issue. It took Vondette approximately five years from the date of judgment to resolve the costs issue.

### ADMISSION AND DETERMINATION

The panel found that Vondette failed to provide the quality of service expected of a competent lawyer. The panel was of the view that a five-year delay would usually warrant a larger fine than that proposed. However, in all of the circumstances, including Vondette's financial circumstances, his lack of a discipline record, the absence of dishonesty in this one-time offence and the steps he had taken toward remediation, the panel approved

a fine at the low end of the appropriate range.

The panel approved Vondette'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 Vondette pay:

1. a fine of \$3,000; and
2. costs of \$1,261.25.

## BARCLAY WAYNE JOHNSON

Victoria, BC

Called to the bar: October 1, 2005

Written materials: November 28, 2018

Panel: Jeffrey Campbell, QC, chair, Gillian Dougans and Mark Rushton

Decision issued: February 8, 2019 ([2019 LSBC 04](#))

Counsel: Mandana Namazi for the Law Society; Peter Firestone for Barclay Wayne Johnson

### AGREED FACTS

Barclay Wayne Johnson was retained to represent a client who was facing imminent eviction from her apartment, as her landlord had obtained an order for possession. The client provided Barclay with a cash retainer of \$1,500. Johnson did not issue a receipt and did not deposit the funds into his trust account. He believed he had completed enough work to be entitled to the funds, but he had not yet rendered an account. Johnson subsequently filed a petition for judicial review on behalf of his client and filed a requisition seeking an interim stay of the order for possession. He asked the client for a further \$1,000 retainer, which the client provided in cash. Johnson did not deposit the funds into his trust account, again believing he had completed enough work to be entitled to the funds. He did not render an account.

The judicial review was successful, and Johnson's client was awarded costs of \$4,500. Johnson believed the costs award should go toward legal fees, as the value of the work done by his office was greater than the funds provided by the client. The client believed the costs award should go to her. Johnson prepared an account that, when reduced by the \$2,500 received from the client, left an outstanding amount of approximately \$4,600. He offered to reduce his account by approximately \$600, leaving \$500 of the costs award to go to the client. Johnson and his client did not come to an agreement.

When Johnson received the costs award of \$4,500 from opposing counsel, he did not deposit it into his trust account but rather cashed the cheque and used it for his own expenses.

In another matter regarding a second client, Johnson made two withdrawals from his trust account. Johnson was entitled to the funds. He withdrew the funds by transferring \$3,500 from his trust account to his general account by way of a branch-to-branch transfer, and he withdrew \$1,000 from the trust account in cash.

## ADMISSION AND DETERMINATION

With regard to the first client, Johnson admitted that his handling of the cash payments and costs award was contrary to the Law Society Rules and that his conduct constituted professional misconduct. With regard to the second client, Johnson admitted that he breached Law Society accounting rules with regard to how the funds were withdrawn and recorded.

Johnson and the Law Society agreed on a proposed penalty of \$2,000.

The hearing panel accepted Johnson's admission of professional misconduct with regard to the first client. The panel found that the transactions with respect to the second client's funds involved a breach of Law Society Rules, but did not constitute professional misconduct.

The panel considered the proposed penalty to be at the low end of the range of disciplinary action for misconduct related to clients' funds, but took into consideration Johnson's limited financial circumstances, his voluntary self-reporting, and his admission to the misconduct and agreement to the penalty.

## DISCIPLINARY ACTION

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

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## SANDA LING KING

Surrey, BC

Called to the bar: February 20, 1998

Discipline hearing: December 10, 2018

Panel: Elizabeth Rowbotham, chair, Dan Goodleaf and David Layton, QC

Decision issued: March 11, 2019 ([2019 LSBC 07](#))

Counsel: Gavin Cameron for the Law Society; Robyn Jarvis for Sanda Ling King

## AGREED FACTS

Sanda Ling King had acted for a husband and wife in their purchase of a home, which was registered in the name of the wife and her father. After the couple separated, they commenced matrimonial proceedings, and the wife put the property up for sale, despite a court order restricting disposition of the property.

The husband wanted to ensure that his mother would be repaid for financial assistance she had provided to the family, and said he would register a certificate of pending litigation against the property if an agreement on the disposition of sale proceeds could not be reached.

A contract of purchase and sale was entered, even though no agreement regarding disposition of proceeds was reached. King represented the wife and her father in the sale of property. The husband registered a certificate of pending litigation against the property

The wife advised King of the certificate of pending litigation and said it needed to be removed to facilitate the sale. The husband, who had been arrested and was now in jail following an altercation with the wife and their daughter, also called King and asked her to remove the certificate of pending litigation.

King drafted a release of the certificate of pending litigation and took it to the Pre-Trial Centre. The husband said he wanted to ensure his mother received \$40,000 from the sale and signed the release. King did not advise him to get independent legal advice, nor that she was not protecting his interests and was acting exclusively in the interests of the wife and her father.

King's law partner met with the wife and her father to attend to the completion of the sale documents. As King was preparing to file the certificate of pending litigation release, she noticed that she had forgotten to add the officer certification. She altered the original document by cutting and pasting her officer certification onto it. She also changed the file number at the top of the release, then applied her own initials and initials purporting to be the husband's to the amended portion of the release. She did not advise the husband she had amended the release, and did not advise the Land Title Office that the release was not a true copy of the original.

On closing of the sale, \$40,000 went to the husband's mother, and the remainder was disbursed to the wife, her father and other relatives.

## ADMISSION AND DETERMINATION

The panel approved King's conditional admission of professional misconduct.

In assessing the proposed disciplinary action, the panel considered that altering a document and knowingly filing a document that is not a true copy of the original constitutes very serious misconduct, as does a lawyer's failure to advise an unrepresented person to obtain independent representation and to tell the person the lawyer is not acting exclusively in the person's interest. The panel took into consideration that King acknowledged her misconduct early in the discipline process and that this was her first conduct matter.

## DISCIPLINARY ACTION

The panel ordered that King pay:

1. a fine of \$8,000; and
2. costs of \$750.

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## PIR INDAR PAUL SINGH SAHOTA

Surrey, BC

Called to the bar: August 11, 2006

Written materials: December 13, 2018

Panel: Gavin Hume, QC, chair, Clarence Bolt and Geoffrey McDonald

Decision issued: March 18, 2019 ([2019 LSBC 08](#))

Counsel: Alison Kirby for the Law Society; Craig Jones, QC for Pir Indar Paul Singh Sahota

## AGREED FACTS

Pir Indar Paul Singh Sahota represented the husband in a family law matter. Under the terms of a settlement, the wife's interest in the matrimonial home was to be transferred to his client in exchange for a payment to the wife and payout of various charges, including two mortgages registered against the property.

Sahota received the transfer documents on his undertaking to attend to the discharge of the mortgages and to provide opposing counsel, within five business days of closing, copies of letters, cheques, payout statements and evidence of delivery or receipt of payout cheques to the financial institution holding the mortgages.

Sahota was also to obtain discharges from the financial institution in a timely manner and, immediately upon receipt of the discharges, register the discharges at the Land Title Office. Sahota was required to register a new mortgage in favour of the financial institution as part of the transfer of the property to the client.

Sahota's conveyancer prepared a letter with undertakings for opposing counsel that were not applicable to the transfer. The conveyancer also prepared a trust cheque. The letter and the trust cheque were set aside for Sahota's review. Sahota did not review the letter or the trust cheque and instructed his staff to forward the letter and trust cheque to opposing counsel. Opposing counsel sent a letter rejecting the incorrect undertaking conditions.

Sahota filed the Form A Transfer but did not register the discharges of the mortgages. That same day, the conveyancer drafted a new letter, incorrectly dated, advising that the trust funds previously sent could be released on a number of undertakings. These undertakings were the same inapplicable ones sent in the previous letter and rejected by opposing counsel. Sahota did not review the letter or the undertakings and sent it to opposing counsel unsigned.

Sahota did not respond to multiple attempts by opposing counsel to contact him regarding the discharges and the documents required in the undertakings.

Nearly three months later, Sahota registered the discharges of the mortgages. The new mortgage was not registered.

The client sold the property to a third party. Sahota did not handle its purchase and sale. The new mortgage was not registered at that time but was, nonetheless, paid out.

Eleven months later, Sahota provided opposing counsel with copies of the letters and cheques sent to the financial institution, but did not convey to opposing counsel the payout statements required by the undertaking.

## ADMISSION AND DETERMINATION

The hearing panel accepted Sahota's admission that he failed to honour

one or more of the trust conditions imposed by opposing counsel; that he failed to answer with reasonable promptness some or all of the communications from opposing counsel that required a response; that he failed to serve his client in a competent, timely, conscientious, diligent and efficient way so as to provide a quality of service at least equal to that which would be generally expected of a competent lawyer in a like situation and/or failed to properly supervise his staff; and that he failed to honour one or more trust conditions imposed by the financial institution in its instructions.

In considering whether to accept the proposed disciplinary action, the panel considered that Sahota had previously been found to have committed professional misconduct in managing financial aspects of his practice, particularly in real estate transactions, and that following a review board decision he was suspended for three months and prohibited from engaging in any capacity with files involving the purchase, sale or financing of real estate until relieved of that condition by the Practice Standards Committee.

The panel considered the proposed one-month suspension to be at the low end of the range of a reasonable and fair disposition, given that the misconduct was serious and considering Sahota's conduct history. However, the panel also considered that, as long as the one-month suspension is not concurrent but consecutive to the previously ordered three-month suspension, the proposed disciplinary action is within the range of reasonable dispositions. The panel concluded that a one-month suspension carries weight only when accompanied by an order identical to that ordered resulting from Sahota's previous discipline case, that he be prohibited from practising in the area of real estate law.

## DISCIPLINARY ACTION

The panel ordered that Sahota:

1. be suspended from the practice of law for one month commencing either April 1, 2019 or on the first day after the conclusion of the suspension previously ordered, whichever is later; and
2. be prohibited from engaging in any capacity with files involving the purchase, sale or financing of real estate until relieved of this condition by the Discipline Committee. ❖

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### *Conduct reviews ... from page 16*

A conduct review subcommittee noted numerous deficiencies in service, including failing to clarify his client's instructions, not sending the letter to the funeral home, inadequate communication and delay, failing to advance his client's interests and failing to maintain substantial documentation in his client file. The lawyer took responsibility for his actions,

apologized to his client and deeply regretted the harm he caused to her. He has taken steps to address his delay and file management issues. The lawyer has since joined a law firm as associate counsel, and the managing partner is assisting the lawyer with his practice issues. He agreed to take the Law Society's online course, the Communication Toolkit, as part of his continuing professional development. (CR 2019-09) ❖

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