



# BENCHERS' BULLETIN

Keeping BC lawyers informed

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# Making headway in a year marked by challenges

by Don Avison, QC

ALTHOUGH WE WERE all hopeful that 2021 would see the end of the COVID-19 global pandemic and the return to what we now call the “new normal,” such was not to be. Nevertheless, we did complete several initiatives during the year.

In this issue of the *Benchers' Bulletin*, we highlight the work that has been done to create the Indigenous intercultural course (IIC). Since the end of September, volunteers have been previewing the IIC, an initiative that will help the Law Society and legal profession understand the history of Indigenous peoples and give them a respectful voice in what we do. While survey responses from those taking the course are overwhelmingly positive, we are listening to feedback and making further improvements to the course in anticipation of its formal launch in January 2022.

We also have been working to improve the independence of the Law Society's Tribunal. At its December meeting, the board approved changes that consolidated the Tribunal rules, created the position of Tribunal Chair and established the Tribunal Office. In 2022, we will create a new Tribunal website that we hope will provide both access to information and resources in relation to the work of the Tribunal and also some degree of separation from the Law Society's professional conduct and discipline functions. We also completed our recruitment of new Tribunal hearing panel members that will help increase the diversity of lawyers and public members on our panels.

In December, the board also received Harry Cayton's review of the Law Society's governance rules, practices and policies. Cayton assessed our governance against the prescribed standards of good governance and made a number of recommendations he believes will improve our ability to uphold and protect the public interest. The board met with Cayton for three hours at the December meeting and will be looking further at the recommendations and their implementation in 2022.

Also in this issue we summarize the

results of the November 2021 election and, as we begin 2022, I am pleased to note that we have eight new Benchers, including five Indigenous lawyers, and we are expecting two new appointed Benchers. The election of five Indigenous lawyers is unprecedented and a significant milestone in the Law Society's ongoing efforts to increase the involvement of Indigenous people in its governance.

Looking ahead in 2022, we will make progress on several of the initiatives set out in the current strategic plan. In keeping with our commitment to improve our regulatory processes to keep up to date with evolving money laundering risks, we look forward to the report of the Cullen Commission and its consideration of the efforts of the Law Society and the legal profession to eliminate involvement with money laundering. We also hope to make progress on improving our discipline processes, in keeping with the direction provided by the board at its retreat in October. We are also anticipating that the Lawyer Development Task Force will make recommendations in 2022 on the Law Society's pre-call requirements for admission to the profession.

I thank outgoing President Dean Lawton, QC for his efforts this past year. During his term in office, Dean demonstrated his commitment to good governance, his support for truth and reconciliation, and his respect for everyone. I welcome Lisa Hamilton, QC, who has begun her term as president for 2022. Lisa is supported by Christopher McPherson, QC, first vice-president, and Jeevyn Dhaliwal, QC, second vice-president, and I look forward to working with all three to make progress on accomplishing the current goals of our strategic plan. I also thank all of the Law Society's board members for their service to the public interest this past year. Finally, I thank all of the Law Society staff for their continued dedication to the work of the Society and for persevering through the challenges we faced in 2021. I'm hopeful that 2022 will turn out to be less challenging.❖

## 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* 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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# Indigenous intercultural course update

*"Informative, sensitive and very worthwhile."*

*"A valuable course as a threshold for enlightening lawyers."*

*"I've taken other IIC courses and found this one to be valuable and well developed."*

*"The program really opened my eyes."*

THESE ARE JUST few of the comments offered by those who previewed the Indigenous intercultural course (IIC) prior to its profession-wide launch in January 2022. Approximately 800 volunteers enrolled in the course preview phase, which began at the end of September and concluded mid-December, to incorporate comments for improving the course materials. Survey responses from previewers were overwhelmingly positive, with 92 per cent saying they found the course valuable, and 94 per cent saying they learned something new.

We heard from lawyers and others who have a background in BC history and taught Indigenous courses praise the IIC as a teaching tool. Some said they took the course believing that they had a fair understanding of the issues, only to discover that they learned much more. Several lawyers expressed how surprising and upsetting it is that they never learned this content from their family, their schooling or legal

career. A few told us that the IIC inspired them to reflect on how they, as lawyers, can take part in reconciliation in their day-to-day work. Some said they expect to re-watch and reread several parts of the course. Many thanked the Law Society for the course.

There was also favourable response from some of the Indigenous lawyers, including "I think the IIC is great," to another saying it is "comprehensive, but well organized and presented in an easy-to-understand manner." A number of individuals reported a strong emotional reaction to the material. Some suggested that, in addition to content warnings that have been added to the material, we explore other mechanisms for those who believe a module (or part of a module) may be too difficult.

Perhaps the most common response we heard from previewers is that they wanted more — more content, more ways

to engage with each other and more dialogue about the material — and to have more people inside and outside the legal profession learn from the IIC. These comments are encouraging in that they demonstrate an appetite for more knowledge and information on actions and strategies, reconciliation as it relates to specific areas of law, and bias, racism and discrimination. While the IIC is meant to provide a baseline, we will continue to consider the ideas we receive for further future education.

The Law Society thanks all of those who volunteered to preview the IIC. Lawyers who took part in the preview phase are eligible to receive up to six hours of continuing professional development credits for their time. Those who were unable to participate or complete the preview will have up to two years to complete all the course modules as the IIC launches in January.❖

## NEW PILOT PROJECT IN 2022

# Free practice consultations

CHANGES IN THE legal landscape. Impacts of the pandemic. Work-life balance. Or maybe the chance to run your own business. There are many reasons for the increase in the number of lawyers who set out on their own as a sole practitioner. But for some, especially new lawyers, starting a new firm can be a scary and challenging thing to do.

The Law Society's Practice Standards team has developed something to assist lawyers who may be struggling with their solo or small firm practice. A new "proactive practice assessment" program is ready to be piloted in 2022. This voluntary

program will provide eligible participants with access to free practice management consultations from a senior legal practitioner. The senior lawyer will also meet one-on-one to review existing practice management systems and recommend any improvements in areas like file management, file-recall strategies, timekeeping options, use of technology, billing and more.

The initial phase of the pilot program will focus on newly called lawyers who are practising in a solo or small firm environment, to help them avoid

common pitfalls that often lead to client complaints. Eligibility may be expanded as the program proceeds. The program will respect cultural awareness and inclusivity, and lawyers from all backgrounds are welcome to apply.

Stay ahead of the game. Early identification and intervention to improve your business and practice will help in the delivery of high-quality legal services for clients.

Keep an eye out for updates early this year.❖

## Law Society considers updating its logo

LOGOS ARE A recognition tool for the public to link an organization to its mission and the services it provides. An effective logo design brings to mind impressions of the organization — what it stands for, its values, perhaps even its vision for the future.

For nearly 125 years, the logo of the Law Society has been a design that resembles, if not imitates, a royal crest. When you get past the fact that the motto emblazoned on the logo — *LEX LIBEROREM REX* — is in Latin, you'll discover it is ungrammatical gibberish that generous translators have taken to mean "law is king of free men" when, in fact, it translates more closely to "the law king." Antiquated and regal symbols can be alienating to the public we serve, and they make it difficult to be recognized as an innovative, modern regulator for the diverse public whose interests the Law Society was established to protect.

Even without these concerns, a century is a long time to be using the same logo. Branding of many major businesses and organizations has evolved over the same period. Coca-Cola, one of the most successful organizations when it comes to brand image, has changed its logo no fewer than 11 times since the late 1800s. Within the legal industry, the American Bar Association and Canadian Bar Association, as well as countless law firms, large and small, have

updated their branding to keep up with the times. To make itself more recognizable and relevant to the public whose interests it protects, the Law Society of Upper Canada overcame tradition, changed its name to the Law Society of Ontario and introduced a more modern, sleek logo that the public could more easily identify.

Against this backdrop, the board of the Law Society has decided it is time to retire the Latin motto and explore a new logo design — one that communicates the Law Society's role and responsibilities to the public, and one that better reflects the diversity of the profession and the province in which we operate. The new design will be informed by the new [strategic plan](#) and our goal to be recognized by the public as a regulator that serves and protects all British Columbians in its regulation of the legal profession.

The process has begun and is still in its early stages. In coming months, the Law Society will work with marketing and design experts to conduct research that will inform creative design options for a new logo that reflects who we are in our unique and diverse province. Consultation and engagement in which the public and legal profession will be able to provide feedback on proposed designs will occur before a final design is presented to the board later in 2022. ❖

### LAW SOCIETY SEAL, THROUGH THE YEARS



1884



1897



1970

## 2021-2022 rule of law secondary school essay contest

DO YOU KNOW a high school student with an interest in the justice system who is passionate about every person's right to equality before the law? Invite them to show us what they know and submit an essay to our 7th annual rule of law essay contest.

The Law Society invites all BC grade 12 students and any other BC secondary school students who have taken or are currently enrolled in Law 12, Political Studies 12, Social Justice 12 or Social

Studies 11, to submit an essay on the following topic:

*The right to freedom of expression is used to justify demonstrations for or against various causes in our society. How does freedom of expression intersect with the rule of law? In what circumstances can courts prohibit or limit a protest or demonstration? Discuss whether your answer is affected by the popularity or unpopularity of the cause.*

The deadline for submissions is Friday, April 22, 2022. The Law Society will select one winning essay and one runner-up from the entries it receives overall. The winning entry will be awarded a \$1,000 prize and the runner-up will receive \$500.

For further details, visit the [website](#) and download the [information sheet](#) and [submission guidelines](#). If you have questions about the contest, contact the [Policy & Legal Services](#) department. ❖

## Election results

EIGHT LAWYERS, INCLUDING five Indigenous lawyers, were elected on November 16, 2021 to their first term on the governing board of the Law Society. They will be joined by 17 board members who are returning following election or acclamation in their district, and five appointed Benchers, in forming a board that better reflects the diversity of the public that the Law Society serves.

The election of five Indigenous lawyers is unprecedented and a significant milestone in the Law Society's ongoing efforts to increase the involvement of Indigenous people in its governance. The Law Society is committed to advancing reconciliation and to fostering diversity and inclusivity. The experiences, skills and perspectives of the new board members will enhance Law Society deliberations and decisions

on regulating the legal profession and protecting the public interest in the administration of justice.

Past President Dean P.J. Lawton, QC congratulates those who were elected and re-elected to the board and thanks all who stood for election. Lawton also thanks the Benchers who will not be returning, acknowledging the years of dedicated service of Pinder K. Cheema, QC, Lisa Feinberg, Martin Finch, QC, Jamie Maclaren, QC, Elizabeth J. Rowbotham, QC, Karen Snowshoe, Chelsea D. Wilson and Heidi Zetzsche.

All those elected will serve a two-year term from January 1, 2022 to December 31, 2023.

Full results of the election are available on the [website](#). ❖

### NEW BOARD MEMBERS



*Tanya Chamberlain*



*Brian Dybwad*



*Katrina Harry*



*Lindsay R. LeBlanc*



*Paul Pearson*



*Georges Rivard*



*Kelly Harvey Russ*



*Gurminder Sandhu*

### ELECTED FOR THE 2022-2023 TERM

#### District No. 1 (Vancouver)

Tanya Chamberlain  
Jennifer Chow, QC  
Cheryl D'Sa  
Lisa Dumbrell  
Brook Greenberg, QC  
Katrina Harry  
Steven McKoen, QC  
Jacqueline G. McQueen, QC  
Kelly Harvey Russ  
Kevin B. Westell  
Gaynor C. Yeung

#### District No. 2 (Victoria)

Lindsay R. LeBlanc  
Paul Pearson

#### District No. 3 (Nanaimo)

Brian Dybwad

#### District No. 4 (Westminster)

Gurminder Sandhu  
Tom Spraggs

#### District No. 5 (Kootenay)

Barbara Stanley, QC

#### District No. 6 (Okanagan)

Michael F. Welsh, QC

#### District No. 7 (Cariboo)

Geoffrey McDonald  
Georges Rivard

#### District No. 8 (Prince Rupert)

Sarah Westwood

#### District No. 9 (Kamloops)

Kim Carter

## In memoriam

With regret, the Law Society reports the passing of the following members in 2021:

Neil Stuart Abbott

Gregory Anctil

John F. Anderson

Kenneth W. Antifaev, QC

Thomas R. Berger, QC

Bal Bhullar

David C. Brown

Donald G. Burrell

Garry S. Callison, QC

Joshua D.E. Cinnamon

Arthur L. Close, QC

Michael G. Coleman, QC

David E. Crumpton

Barry Y.F. Dong

Paul R. Evans

M. Peter Geronazzo

Steven R. Gjukich

Sherman W. Hood, QC

Constance D. Isherwood, QC

Jeffrey W. Joudrey

Robert Kucheran

Brandon L. Langhjelm

B. Jody Lotzkar

Eugene E.P. Macchi

A. Keith Mitchell, QC

Dorothy-Jean O'Donnell

Susen M. Rotto

Richard Salter

M. Anne Sheane

Donald A. Silversides, QC

Robert H. Spring

Ian Waddell, QC

Allan W. Watchorn

Lynda Dunham-Wilkie ❖

## In brief

### JUDICIAL APPOINTMENTS

**Scott Mulder** was appointed a judge of the Provincial Court in Quesnel.

**Michael Munro** was appointed a judge of the Provincial Court in Victoria.

**Nina Purewal**, QC was appointed a judge of the Provincial Court, initially in Prince George. ❖

## Law Society adds service providers to innovation sandbox

IN AN ONGOING effort to improve the availability of affordable legal services for British Columbians, the Law Society has authorized the following service providers to enter the innovation sandbox:

- **Nya Guy** – incorporation, extra-provincial registration, annual filings and other corporate legal services, and referral to lawyers where legal advice is required.
- **Christopher Hall** – advice and document preparation for small claims, and advice, document preparation and representation during hearings and settlement processes before the Residential Tenancy Branch, Civil

Resolution Tribunal and Employment Standards Tribunal.

- **Jolene Johnson** – advice and document preparation for small claims, and advice, document preparation and representation during hearings and settlement processes before the Residential Tenancy Branch and Civil Resolution Tribunal.
- **Dominika Justynski** – advice, document preparation and representation during hearings and settlement processes before the Residential Tenancy Branch.

There are now over 20 service providers whose proposals are being monitored in

the innovation sandbox. These include law firms working with paralegals and others to create cost-effective services for a new range of clients, as well as online services that make use of artificial intelligence. The Law Society ensures that consumers are protected through monitoring and regular reporting by the providers. As well, each will provide services in accordance with a “no-action” letter that sets out conditions under which they must operate.

If you or your firm has an innovative idea to improve access to legal advice and assistance, we invite you to submit a proposal. For more information, visit the [Innovation Sandbox](#) page on the Law Society’s website. ❖

# Enhancing the independence of the Tribunal

by Christopher McPherson, QC

IN DECEMBER, HARRY Cayton, an internationally recognized expert in professional regulation governance, finished his independent review of the Law Society's governance structure. With respect to the Tribunal, Cayton recommended that the Law Society enhance the separation between the disciplinary Tribunal and the Society to establish more clearly the independence of adjudication from the regulator's investigation and prosecution functions.

The Law Society's governing board has long recognized the need to fully separate the Tribunal from the other functions of the Law Society. As a step toward this goal, the majority of members of hearing panels and review boards have been lawyer and public adjudicators who are not elected to the governing board. In this regard, I am delighted to report that the following 10 new lawyer and public adjudicators joined the Tribunal as of January 1, 2022:

|               |        |
|---------------|--------|
| Karen Ameyaw  | Lawyer |
| Jereme Brooks | Public |
| Nicole Byres  | Lawyer |
| Cindy Cheuk   | Lawyer |

|                  |        |
|------------------|--------|
| Warren Funt      | Public |
| Mark Gervin      | Lawyer |
| Kris Gustavson   | Public |
| Trudy O'Donaghey | Public |
| Kate Saunders    | Lawyer |
| Krista Simon     | Lawyer |

In addition, the board recently created a new position of Tribunal Chair to oversee the functioning of a newly expanded independent Tribunal Office. I have been asked to act as Tribunal Chair for the next year as the duties and responsibilities of this office are developed.

As Tribunal Chair, I will work to ensure that the Tribunal has the tools it needs to excel. I will make certain that adjudicators undergo comprehensive training both before they can sit on panels or review boards and throughout their appointment. I will also ensure that Tribunal adjudicators are drawn from a more diverse group of lawyers and the public.

I am also focused on strengthening public transparency of the Tribunal's processes. In this regard, I can report that the

Law Society's governing board has adopted my recommendations to consolidate the rules relating to the Tribunal in one location under Part 5 of the Law Society Rules that will be applicable to both disciplinary and credentials hearings.

At the same time, I have been working with Tribunal Counsel to create a Guide to Practice and Procedure before the Tribunal, that I hope will be accessible to the public, lawyers and the Law Society on a newly created Tribunal website targeted to launch in July 2022. The purpose of the guide is to ensure that the Tribunal's processes and proceedings are transparent to the public, to lawyers and to people applying for a licence to practise law in British Columbia.

Finally, I have asked Tribunal Counsel to work with Law Society staff to review the current *Legal Profession Act* and Law Society Rules so that over the next year recommendations can be made to the Law Society's board to complete the separation of the adjudicative functions from the rest of the Law Society. ❖

## Unauthorized practice of law

THE LAW SOCIETY protects the public by taking action against individuals and businesses that are not authorized to provide legal services and are not approved participants in the [innovation sandbox](#) initiative, where they pose a significant risk of harm to the public.

Between July 13 and November 25, 2021, the Law Society obtained one written commitment from an individual to cease engaging in unauthorized practice of law. The public may be put at risk by unregulated and uninsured legal services or when individuals misrepresent themselves as lawyers. If such individuals break their commitments, the Law Society may obtain

a court order against them.

The Law Society also obtained two court orders prohibiting the following individuals from engaging in the unauthorized practice of law.

- **Zul Mitha** – On July 14, 2021, Mr. Justice Ward K. Branch granted an injunction against Zul Mitha prohibiting him from representing himself as a lawyer, practitioner of foreign law, or any other title that connotes that he is entitled or qualified to engage in the practice of law. Mitha is also prohibited from commencing, prosecuting or defending a proceeding in any court other than representing himself as an

individual party to a proceeding acting without counsel solely on his own behalf. The Law Society was awarded its costs.

- **Loraine Lee** – On October 6, 2021, the BC Supreme Court issued a consent order prohibiting Loraine Lee, of Port Alberni, from engaging in the practice of law, and from representing herself as being a lawyer or any other title that connotes she is qualified or entitled to practise law.

To read the orders, search by name in the Law Society's [database of unauthorized practitioners](#). ❖

FROM THE RULE OF LAW AND LAWYER INDEPENDENCE ADVISORY COMMITTEE

## Everyone has the right to hire a lawyer, even those who are unpopular

THE HEADLINE IN a major Canadian daily newspaper read, “Has it become dangerous to be a lawyer in Ontario?” This was written after lawyers had been harmed and threatened and, in one tragic case, a law firm staff member was killed.

Being a lawyer is stressful, but it should not be life-threatening. Lawyers may, from time to time, be called on to represent unpopular clients or lead evidence that makes people uncomfortable, but it ought not to be at the cost of their safety.

The rule of law requires that all are equal before the law. For this to mean anything, people must be able to get advice concerning how the law applies to them. Though we usually analyze access to justice from the point of view of the client, there is the other side of the coin: lawyers must be able to advise all who seek their counsel, even those whose views may be unpopular with the state or with society in general.

Those who seek legal advice are not always society’s most upstanding citizens. They may be accused of a crime, or they may hold unpopular political or social views. But those individuals are just as entitled to legal advice as anyone else. A morality test is not a prerequisite for obtaining legal assistance. It is up to a court, not a lawyer, to determine questions of legality. Even the state, whether prosecuting an unpopular law or trying to establish the constitutionality of an unpopular social policy, is entitled to legal advice.

While lawyers are often derided — particularly in the media — as their clients’ “mouthpieces,” lawyers are not the alter ego of their clients. A lawyer’s sole job is to provide legal advice and legal representation. They do not need to agree with the personal choices, opinions or politics of a client in order to represent them.

Nevertheless, in a world that has become increasingly divided and parochial, lawyers are frequently castigated when representing a client that is not popular,

is accused of bad conduct or both. While this may be expected in an authoritarian state when a lawyer represents interests opposed to the state’s policy, it is also happening with greater frequency in Western countries, including Canada.

Canadian lawyers have been the subject of criticism, harassment and even

immigrants were castigated by a Conservative government as “lefty lawyers,” simply for taking legitimate legal positions that were contrary to government’s preferred policies. In another matter, a senior lawyer was criticized for representing an unpopular foreign government in a foreign court in proceedings that sought to uphold a law



threats relating to their representation of clients. Marie Henein, a prominent criminal defence lawyer in Toronto, was heavily criticized in some quarters for representing Jian Ghomeshi. Because of the nature of the crimes he was alleged to have committed, certain groups unfairly questioned her credentials as a representative of her gender. England also provides some recent examples. There, lawyers who represented

that was unpopular in England.

The principle that a lawyer should not be identified with a client’s cause is very important. Without it, the rule of law would suffer. When lawyers are subject to scorn or violence because of who they represent, they may decide that it is not worth representing certain people. This is happening in many authoritarian states like China and Russia, where lawyers sometimes find

their ability to practise law terminated because they represent a client with dissident views. Sometimes the lawyer suffers a worse fate. Over past months, there are many examples of Hong Kong lawyers facing state sanctions for representing democracy activists. This is undoubtedly intended to send a message to lawyers not to act for such clients.

The principle is so important that it is listed in the United Nations Office of the High Commissioner for Human Rights Basic Principles on the Role of Lawyers. Those principles provide that “Lawyers shall not be identified with their clients or their clients’ causes as a result of discharging their functions.” Moreover, it notes that “Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation ... [or] harassment ... and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other

sanctions for any action taken in accordance with recognized professional duties, standards and ethics.” Further, “where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities.”

A lawyer may, of course, agree with a client’s views and politics. Some lawyers seek out specific causes because they are interested in helping to advance or change the law in a particular area of social policy. The guiding principles and professional duties they must follow, though, are the same, whether or not they agree with the client’s cause. Lawyers who are unable or unwilling to dissociate the cause from their role as a lawyer (such as the recent examples of Rudy Giuliani and Sidney Powell) often find themselves in trouble with their regulator. Their advice often becomes conflated with what their client wants the outcome to be, rather than a dispassionate

analysis of the law. In the end, the client may be deterred from making rational decisions on what remedies to seek or what defences to raise.

For the rule of law to succeed, a lawyer must be viewed only as a representative, not an alter ego, of a client. Society must allow lawyers to do their jobs without facing the opprobrium of those who disagree with their clients’ conduct. Otherwise, clients will be forced to search out a lawyer who agrees with their values, which would likely be hard to do and prevent them from obtaining the best legal advice. And, if lawyers ever feel that they will be harassed or threatened for advising unpopular individuals, they may eventually decide to act only for those who hold mainstream views. Marginalized people could be left unable to avail themselves of legal remedies. The rule of law would cease. ❖



FROM THE LAW FOUNDATION OF BC

## Virtual Legal Clinic serves clients around BC

FAMILY LAW IS widely recognized as having one of the biggest gaps in access to justice in BC, particularly in smaller, chronically underserved communities. Rise Women’s Legal Centre identified this need in its early days of operation and, in 2017, tested the waters with the Remote Services Project. The success of that project has now evolved into the ever-expanding Virtual Legal Clinic (VLC).

Before the COVID-19 pandemic, the VLC — with Rise lawyer Vicky Law at the helm — served about 20 to 25 clients per month from outside Metro Vancouver. When the pandemic hit, governmental stay-at-home orders suddenly meant that countless women already in unstable domestic situations were now confined to these unsafe homes, and gender-based violence increased significantly. Women in remote communities are doubly isolated by geography and lack of services, and requests for help from the VLC increased approximately 60 per cent since Spring 2020; the VLC now averages 51 clients per

month, with a record 63 clients in August 2021. In addition, when many of the programs moved to remote service delivery during the pandemic, the VLC became a credible source of information for lawyers and advocates on the provision of safe and effective virtual services.

To meet these challenges, this Summer the VLC added a Virtual Legal Advocate to provide direct services to women in need. Samantha Davis completed her practicum for a graduate degree in social work at Rise in 2020, and that training and hands-on experience allowed her to hit the ground running — she stepped into the role already equipped with a solid understanding of family law basics, experience with registry procedures, court forms and documents, and excellent advocacy skills. Sam provides clients with general legal information, family violence screening and support, referrals to community and governmental resources, and help with legal forms and document drafting.

Rise’s ability to meet this unprece-

ded need for legal services is due to ongoing support from the Law Foundation, as well as support from the Law Society’s Access to Justice Fund, which provided seed funding for the VLC and currently supports the Virtual Legal Advocate.

### 2020 ANNUAL REPORT – ERROR IN PRINT VERSION

The print version of the Law Foundation’s 2020 Annual Report contains an error in the Financial Highlights on page 34. The narrative description of the Foundation’s expenditures is correct, but the bar chart labelled “Expenses” should have reported total grants and expenditures of \$32,856,993 (incorrectly printed as \$32,856,990), including total grants approved of \$30,282,532 (incorrectly printed as \$32,282,529). The Foundation apologizes for the error.

The digital version of the Annual Report sent out previously by email is correct and available online at [www.lawfoundationbc.org/our-work/annual-report](http://www.lawfoundationbc.org/our-work/annual-report). ❖



PRACTICE ADVICE, by Barbara Buchanan, QC, Practice Advisor

## Cash or cheque refunds; compromised records

### RETURNING EXCESS CASH DEPOSITS: CASH VERSUS CHEQUE

Do you know when you must refund a retainer in cash versus when you must issue a refund using a cheque?

If you are a lawyer who sometimes receives a cash retainer for legal services, it is important to know the difference. Any refund of cash received or accepted in an aggregate amount greater than \$7,500 must be made in cash. Rule 3-59(5) states:

(5) A lawyer or law firm that receives or accepts cash in an aggregate amount greater than \$7,500 under subrule (4) [in respect of a client matter for “professional fees,” “disbursements” or “expenses”] must make any refund out of such money in cash.

The words in quotation marks are defined in Law Society Rule 3-53.

The table on the following page shows some scenarios that illustrate when a lawyer or law firm must refund a retainer in cash. In all situations where a cash retainer is greater than \$7,500 (regardless of whether it was a lump sum or a series of deposits), the refund must be in cash. If your services are terminated and the client is moving on to a new lawyer, the cash should be returned to the client or, if directed, to the new lawyer in cash. Do not issue a trust cheque to the new lawyer if the cash retainer was greater than \$7,500. If the retainer was less than \$7,500, see Rule 3-64(4) and (5) with respect to withdrawals from trust by cheque, electronic transfer or bank draft.

More scenarios and other information are included in the Fall 2019 *Benchers' Bulletin* article, [Rule amendments enhance Law Society's anti-money laundering measures](#) (page 14).

### Cash receipt book obligations

A lawyer or law firm that receives any amount of cash for a client must maintain and keep current a cash receipt book of duplicate receipts (Rule 3-70). Each receipt must be signed by the lawyer (or by an individual authorized by the lawyer) and must also be signed by the person from whom the cash is received. If cash is refunded from a separate or pooled trust account, the lawyer who withdraws the funds must make a record of the transaction signed by the person to whom the cash was paid.

### Watch out for direct cash deposits

Be aware that if a client or other person has your trust account information, they could deposit cash directly into your trust account without your knowledge or consent. Be on guard. Check all direct deposits to determine the form of funds deposited

| Cash retainer refund scenarios |               |   |                |
|--------------------------------|---------------|---|----------------|
| Retainer                       | Amount billed | Reason for refund                               | Form of refund |
| \$8,000 cash                   | \$5,000       | Return excess retainer                          | \$3,000 cash   |
| \$5,000 + \$3,000 cash         | \$6,000       | Return excess retainer                          | \$2,000 cash   |
| \$7,000 cash                   | \$4,000       | Return excess retainer                          | \$3,000 cheque |
| \$8,000 cash, \$2,000 cheque   | \$7,000       | Return excess retainer                          | \$3,000 cash   |
| \$8,000 cash to Lawyer A       | None          | Lawyer A terminated;<br>(file transfer, A to B) | \$8,000 cash   |
| \$8,000 from Lawyer A to B     | \$2,000       | Return excess retainer                          | \$6,000 cash   |

and accurately record the information. If cash was deposited, you should determine if you can accept it.

### Reporting to the executive director

Rule 3-59 distinguishes between “receive” and “accept.” If cash is deposited that you are not permitted to accept, subrule (6) requires that you:

- make no use of the cash;
- return the cash or, if that is not possible, the same amount in cash, to the payer immediately;
- make a written report of the details of the transaction to the executive director within seven days of the receipt of the cash; and
- comply with all other rules pertaining to the receipt of trust funds.

Make sure that relevant staff understand your firm’s policy and the rules for accepting cash. If, for example, a client drops off \$10,000 cash at your office toward a purchase of a restaurant and your receptionist deposits the cash before you know about it, you would have received the cash but you would not be permitted to accept it.

### Preliminary considerations with respect to accepting cash

For some preliminary considerations with respect to accepting cash, see [Anti-money laundering cash transaction rule essentials](#) (*Bencher’s Bulletin*, Summer 2019, at page 10). In my view, a lawyer should not accept a large amount of cash without proper due diligence, even if cash is technically permitted by Rule 3-59(4). Also, a cash retainer should be commensurate with the legal

services to be provided. Establish a policy about accepting cash that is, at a minimum, compliant with Rules 3-59 and 3-70 and that takes red flags into consideration.

In addition to complying with Rules 3-59 and 3-70, be alert to these professional obligations: Law Society Rules 3-58.1 (trust account only for legal services), 3-68(a) (source and form of trust funds received), 3-69 (source of general funds received) and 3-98 to 3-110 (client identification and verification) and *BC Code* rules 3.2-7 (dishonesty, fraud by client) and 3.2-8 (dishonesty, fraud when client an organization). Note the rules about withdrawal: *BC Code* rule 3.7-7 (obligatory withdrawal) and Law Society Rule 3-109 (criminal activity, duty to withdraw).

For a deeper understanding of your professional obligations with respect to anti-money laundering, consider viewing the Law Society’s Anti-Money Laundering Measures webinar (free of charge and eligible for two hours of CPD credit). This webinar will help you comply with your obligations and fulfill your CPD requirements in the areas of professional responsibility, ethics and practice management. It includes information on money laundering, cash, client identification and verification, red flags and risk management. The webinar can be accessed through the [Client ID & Verification resources web page](#).

<sup>1</sup> A “record” may include accounting records and supporting documents (trust account, general account, cash transaction and billing records), client identification and verification information and documents, metadata associated with electronic records, and client file documents, whether in paper or electronic form.

### LOST OR STOLEN BRIEFCASE? CYBER ATTACK? WHAT TO DO IF PRACTICE RECORDS ARE COMPROMISED

Do you have a plan for what to do if your laptop or briefcase is lost or stolen or if you are the victim of a cyber incident? If you have lost custody or control of your electronic or physical records,<sup>1</sup> including personal or confidential client information, for any reason (misdirected correspondence, lost or misplaced records or electronic devices, theft, a cyber attack or otherwise), consult your security breach response plan.

If you do not have a plan, below is a short list of procedures to consider (not a substitute for a detailed plan). Determine the applicability of the procedures and their order in context. Not every procedure may be applicable to every situation.

1. Establish your response team and its responsibilities and priorities, including a communication plan to staff and others.
2. Contact a Law Society practice advisor if you have questions regarding your professional obligations pursuant to the *BC Code*, including sections 3.3 (Confidentiality) and 7.8 (Errors and omissions) and Law Society Rules 3-74 (Trust shortage) and

## Services for lawyers

### Law Society Practice Advisors

Barbara Buchanan, QC  
 Brian Evans  
 Claire Marchant  
 Jeff Rose, QC  
 Sarah Sharp  
 Edith Szilagy

Practice advisors assist BC lawyers seeking help with:

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

Tel: 604.669.2533 or 1.800.903.5300

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



**LifeWorks** – Confidential counselling and referral services by professional counsellors on a wide range of personal, family and work-related concerns. Services are funded by, but completely independent of, the Law Society and provided at no cost to individual BC lawyers and 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 604.605.5303 or [equity@lsbc.org](mailto:equity@lsbc.org).



- 10-4 (Security of records). Your clients will need to be informed if their records have been compromised or lost. Contact a practice advisor by email at [practiceadvice@lsbc.org](mailto:practiceadvice@lsbc.org) or by phone at 604.443.5797. In the case of a cyber breach, use email only if your IT professional or Coalition, Inc. says it is safe to do so.
3. Report to the Lawyers Indemnity Fund (LIF) immediately if the lost records or missing information relate to a client file with an imminent transaction or proceeding, or a loss of trust funds: [Report a claim to LIF](#).
4. Report to LIF’s cyber program insurer, Coalition, Inc., immediately for both physical and technological privacy or data breaches: [Report a claim to Coalition](#). The program coverage includes a breach coach or privacy lawyer (two hours free) to advise on regulatory compliance, notifying clients and third parties, credit monitoring costs, data restoration costs, network interruption costs, ransomware and more. LIF’s website has more information about your cyber coverage: [Your Cyber Coverage](#).
5. You may have additional privacy and data breach coverage from another insurer, so you should also contact your broker.
6. Contact your IT professionals to work with Coalition’s security team.
7. Contact LIF to discuss recreating files if physical records are lost or information is missing.
8. Contact your financial institutions if bank accounts or credit cards are at risk.
9. Send Rule 10-4 (Security of records) reports to the Executive Director, c/o the Director, Intake, Early Resolution and Practice Standards ([professionalconduct@lsbc.org](mailto:professionalconduct@lsbc.org)). See the Discipline advisory, [Rule 10-4 Reports](#) (August 31, 2021). Send Rule 3-74 (Trust shortage) reports to the Executive Director, c/o Trust Assurance ([trustaccounting@lsbc.org](mailto:trustaccounting@lsbc.org)). Sample letters for reporting trust shortages are in Appendix C of the [Trust Accounting Handbook](#). If your IT professional or Coalition says that it is not safe to use email, you can send your reports by Canada Post or courier to the Law Society of British Columbia, 845 Cambie Street, Vancouver, BC V6B 4Z9).
10. Report to your local police (optional, but may be a requirement by some insurers) and to the [Canadian Centre for Cyber Security](#) (also optional).
11. Update or design your response plan based on what you have learned.

### QUESTIONS AND HELP

For questions related to ethics, the *BC Code*, client identification and verification or Rule 10-4 reports, contact a Law Society practice advisor ([practiceadvice@lsbc.org](mailto:practiceadvice@lsbc.org) or 604.443.5797). Contact a Law Society trust auditor ([trustaccounting@lsbc.org](mailto:trustaccounting@lsbc.org) or 604.697.5810) with questions about the cash rules, trust accounting and general accounts. ❖

## 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. They 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 in which they may 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.

### CASH RULES

A lawyer accepted an aggregate total of \$8,200 in cash from his client as a retainer on a criminal law matter. At the conclusion of the retainer, the lawyer refunded \$5,960 to the client by way of trust cheque instead of cash, contrary to Law Society Rule 3-59(5). The lawyer acknowledged the error and has made changes to his office procedures. CR 2021-50

A different lawyer accepted a total of \$30,000 cash and subsequently paid the \$30,000 by way of trust cheque to opposing counsel as settlement funds, contrary to Law Society Rule 3-59(1), (3), (4) and (6). The lawyer admitted that he was wrong in issuing a trust cheque for the settlement, when the retainer and the balance owing for the settlement were paid in cash. He has taken steps to ensure this does not happen again and no longer accepts cash retainers. CR 2021-51

A lawyer accepted \$12,000 and \$8,000 in cash on two separate files, contrary to Law Society Rule 3-59(3), and also failed to properly issue cash receipts for the cash received, contrary to Law Society Rule 3-70(1). The lawyer was not aware of the cash payments at the time they were received. He has ensured through staff training and improved internal processes that proper steps are followed relating to cash transactions. CR 2021-52

In a separate matter, a lawyer's firm accepted an aggregate total of \$25,640 in cash and issued trust cheques, paying \$23,840 to the Canada Revenue Agency in partial satisfaction of a client's CRA debt, contrary to Law Society Rule 3-59(3). In addition, the firm failed to issue two cash receipts to the client, contrary to Law Society Rule 3-70(1). The lawyer was of the understanding that she could not accept more than \$7,500 for legal services in cash at one time, not in

the aggregate. The lawyer and the law firm collectively reviewed the Law Society Rules with respect to accepting cash, source of money information and use of a lawyer's trust account. The firm has ceased taking cash payments altogether. CR 2021-53

### JURICERT

A compliance audit revealed that a lawyer disclosed his Juricert password to members of his staff and permitted them to affix the lawyer's personal digital signature on documents filed in the Land Title Office, contrary to his Juricert Agreement, Part 10.1 of the *Land Title Act*, Law Society Rules 3-96.1 and 3-64.1(6) and rule 6.1-5 of the *Code of Professional Conduct for British Columbia*. The lawyer mistakenly believed that his assistant could use his digital signature if it was applied in his presence. The lawyer has obtained a new password and now reviews all documentation and affixes his digital signature himself. CR 2021-54

Another lawyer disclosed his Juricert password to his legal assistant and permitted her to affix his digital signature on documents for e-filing with the Land Title Office, contrary to his Juricert Agreement, Part 10.1 of the *Land Title Act*, Law Society Rules 3-3-96.1 and 3-64.1(6) and rule 6.1-5 of the *Code of Professional Conduct for British Columbia*. The lawyer was aware of his obligations under the Rules and *BC Code*, but thought a designated paralegal could affix a supervising lawyer's digital signature. The lawyer has changed his Juricert password and ensures that he affixes his digital signature himself. CR 2021-55

### CLIENT ID AND VERIFICATION

*In similar but separate instances, conduct review subcommittees met with lawyers who had acted in transactions for clients they had not met in person and where they failed to confirm their clients' identities according to the client identification and verification rules set out in Part 3, Division 11 of the Law Society Rules (Law Society Rules 3-98 to 3-110).*

A compliance audit revealed that a lawyer acted for clients based in Hong Kong in a real estate transaction, without verifying her clients' identities, as required by Law Society Rule 3-102. The lawyer had not met or acted for the clients prior to this matter. The clients intended to meet the lawyer to sign the conveyancing documents when they were visiting Vancouver but called the lawyer's office and spoke with the lawyer's assistant to advise that they did not have time to meet. The assistant forwarded the real estate documents to the clients so they would have an opportunity to review them prior to signing, but instead the clients executed the documents and returned them to the assistant. The lawyer has taken steps to prevent this error from occurring again. CR 2021-56

In a similar instance, a compliance audit revealed that a lawyer failed to comply with client identification and verification rules in two real estate transactions for clients located elsewhere in British Columbia. Because the lawyer had known the individual client for some years, he did not take steps to identify or verify the client's identity and failed to verify the identity of an organization, contrary to Law Society Rules 3-102 and 3-104. The lawyer admitted that he had never read the rules and was surprised when an audit revealed the error. The lawyer understands the necessity to ensure full identification of all parties in all transactions. CR 2021-57

In two real estate transactions, a lawyer failed to comply with the client identification and verification requirements, contrary to Law Society Rules 3-102(1) and 3-103. One transaction involved a transaction that was not conducted in person, and another involved an organization. In the first instance, the failure was due to a lack of supervision of the conveyancer, as the lawyer was working out of the province and was unable to personally review the documents before they were sent to the client. In the second instance, the lawyer was not aware of the rules governing corporations with respect to real estate transactions. The lawyer has now improved internal processes to ensure compliance. CR 2021-58

A compliance audit revealed that another lawyer failed to identify his clients in two financial transactions, including one transaction that was conducted without meeting in person, as required under Law Society Rules 3-102, 3-103 and 3-104. The lawyer has implemented strict identification protocols requiring all new clients to attend the lawyer's office in person to confirm their identity. The audit also revealed a failure to record trust transactions within seven days, contrary to Rule 3-72(1); failure to perform monthly trust reconciliations when required, contrary to Rule 3-73; failure to immediately correct trust shortages and report two shortages over \$2,500 to the Law Society, contrary to Rule 3-74; and withdrawals from trust when the trust accounting records were not current, contrary to Rule 3-64(3). The lawyer advised that she was without a bookkeeper during the time that two NSF cheques from a client caused a shortfall in her trust account. The lawyer personally checks the trust account every few days and is in regular contact with her accountant. CR 2021-59

### BULLYING / HARASSMENT

A lawyer engaged in unwelcome physical contact with a colleague during a social activity at a work event, contrary to rules 2.2-1 and 6.3 of the *Code of Professional Conduct for British Columbia*. The lawyer acknowledged that his conduct caused harm to his colleague. He expressed remorse and accepted responsibility for his actions. CR 2021-60

### RUDENESS / INCIVILITY

While representing a client in a family law matter, a lawyer failed to inform his client of an appointment to assess costs and failed to obtain instructions regarding the assessment, contrary to rule 3.2-1 of the *Code of Professional Conduct for British Columbia*. The lawyer acknowledged that he should have taken steps to ensure that his client had received notice of the hearing and confirmed what the client intended to do. He has changed the firm's protocols to ensure that notice of important communications is provided to clients and saved to the specific file. The lawyer also made discourteous and unprofessional comments about a BC Supreme Court justice and the opposing party in emails to the client, contrary to rules 2.1-2, 7.2-1 and 7.2-4 of the *BC Code*. The lawyer acknowledged his communications should have been more appropriate in tone and has committed to taking steps to ensure future communications are professional. CR 2021-61

### EXECUTOR REMUNERATION

In the course of acting in a wills and estates matter, a lawyer prepared a will for a client that appointed her as executor and provided that executor remuneration be paid by way of a gift, contrary to rules 3.4-38 and 3.4-39 of the *Code of Professional Conduct for British Columbia*. The rule does not permit a lawyer to prepare an instrument giving the lawyer a gift or benefit from a client, including a testamentary gift, unless that client is a family member. The lawyer also withdrew the executor remuneration prior to obtaining the beneficiaries' consent, contrary to Law Society Rule 3-64(1)(a), which states that a lawyer must not withdraw any trust funds unless the funds are properly required for payment or on behalf of a client or to satisfy a court order. Finally, the lawyer billed the estate for her assistants to perform executor duties, in addition to taking the executor remuneration specified in the will. The lawyer accepted full responsibility and has taken considerable measures to rectify her conduct. She has ceased agreeing to be the executor in clients' wills. CR 2021-62

### ADVERTISING / MARKETING

A lawyer produced and distributed a music video on various social media platforms associated with his law firm. The lawyer's role in producing and performing in the video was inappropriate, as the video was a form of marketing and is contrary to rules 2.2, 4.2-5 and commentary [1](c) and 5.61 of the *Code of Professional Conduct for British Columbia*. In particular, the depiction of the judiciary was contrary to the lawyer's obligations to maintain the integrity of the profession and to encourage public respect for the administration of justice. The lawyer acknowledged that the errors in judgment were caused by health and personal issues he was experiencing at the time. CR 2021-63 ❖

## Discipline digest

BELOW ARE SUMMARIES with respect to:

- William Thomas Clarke
- Hong Guo
- Sumit Ahuja
- Glen Orris, QC

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

### WILLIAM THOMAS CLARKE

Kelowna, BC

Called to the bar: May 17, 1996

Written materials: July 12 and August 30, 2021

Decision issued: October 8, 2021 ([2021 LSBC 39](#))

Panel: David Layton, QC (chair), Brendan Matthews and Heidi Zetsche

Counsel: Barbara Lohmann for the Law Society; William Smart, QC for William Thomas Clarke

#### FACTS

William Thomas Clarke was charged criminally with knowingly uttering a threat to cause death or bodily harm to his former partner. He pleaded not guilty, and his defence at trial was that he had engaged in a jesting rant. The judge rejected his defence, convicted Clarke and sentenced him to a 12-month conditional discharge. The conviction was upheld on appeal by both the BC Supreme Court and the BC Court of Appeal.

In his reasons for judgment, the judge set out the circumstances of Clarke's offence. Clarke and his former partner had separated, and he resented being forced to give her title to property he owned in Ontario. His former spouse had asked one of their mutual friends to collect and store firearms that Clarke owned and had left in the residence he had shared with his former spouse, as she did not want to keep them or give them back to him. Clarke wrote on his social media page about "killing his past and maybe getting 25 years." He told his former spouse on the phone that she kept taking their child away from him and said, "That is why spouses hate each other and kill each other, when they are deprived of the parenting rights they believe they are entitled to." He later sent an email to her that said, "You may want to take a different approach. I saw you waving at the window today. I want you dead." He later admitted to her that his comment had been inappropriate and apologized, and she chose not to report this to police.

Months later, Clarke telephoned his former partner to discuss arrangements regarding their child, and she asked about a delay in the

sale of the condominium and her receiving the proceeds. He called her greedy. He talked about a former criminal client who could solve problems by intimidating people, hurting them or making them disappear. He said people who were within six or two degrees of separation of them could end up with bullets in them and warned that she should beware. He said that he did not care if he ended up spending the rest of his life in jail.

Shortly after this telephone call, the friend who had retrieved and was storing Clarke's firearms telephoned the former spouse to tell her that Clarke said he was coming to pick up his guns. Clarke's former spouse then received a telephone call from Clarke, who asked if she had just spoken to the friend. The timing of the call was frightening to her. She sought legal advice and reported the matter to the police.

Clarke self-reported his criminal charge to the Law Society. He continued to assert his innocence and stated he did not threaten his former partner. He acknowledged that his actions had adversely impacted her and he has participated in counselling and relationship programs. He said he now has a cordial relationship with her.

#### ADMISSION AND DETERMINATION

Clarke admitted to the allegations in the citation. The panel concluded that Clarke's violation of the criminal law by threatening his former partner reflected adversely on public confidence in the legal profession and constituted conduct unbecoming the profession.

#### DISCIPLINARY ACTION

Clarke and the Law Society jointly submitted that the penalty should be a fine of \$12,000. The panel considered the significant seriousness of his conduct, particularly his access to firearms, the pattern of unacceptable behaviour toward his former partner and the significant impact on her. The panel noted that, apart from his criminal conduct, he had a reputation of good character in the legal profession and the broader community. The panel accepted that Clarke had completed programs and counselling, apologized for his behaviour and has abided by all probation terms during his 12-month sentence. The panel considered the range of penalties in similar cases and determined that the proposed fine of \$12,000 would not be contrary to the public interest in the administration of justice and ordered Clarke to pay the fine and costs of \$1,000.

### HONG GUO

Called to the bar: May 4, 2009

Discipline hearing: February 3-7 and 10-14 and June 23, 2020 and May 12-13, 2021

Written submissions: June 1, 2021

Panel: Jennifer Chow, QC (chair), Ralston Alexander, QC and John Lane  
Decisions issued: November 4, 2020 ([2020 LSBC 52](#)) and October 26, 2021 ([2021 LSBC 43](#))

Counsel: Alison Kirby for the Law Society; Gerald Cuttler, QC and Lucy Zhao for Hong Guo

## FACTS AND DETERMINATION

Hong Guo is a sole practitioner with a focus on real estate conveyances, immigration and corporate-commercial transactions. From May 2014 to April 1, 2016, she employed a bookkeeper who was responsible for preparing trust and general cheques, making bank deposits, recording financial transactions, preparing monthly trust reconciliations, preparing payroll and other general office duties. Guo relied on her bookkeeper to a significant extent to ensure compliance with accounting rules. The bookkeeper was casual about timing of trust receipts and disbursements, and several key trust accounting reconciliations were not done for the months leading up to an employee theft and fraud. Had the trust reconciliations been done, it would have revealed the false inflation of the trust account balances by fake deposits, as there was more money owed to clients than was in the bank.

Before leaving for vacation in March 2016, Guo gave her bookkeeper 125 pre-signed blank trust cheques and left them with the bookkeeper to use for trust transactions. The bookkeeper orchestrated theft from the trust account by crediting fake deposits to a ledger set up in a former conveyancing assistant's name, thereby inflating the apparent balance available for withdrawal. From late February to March 31, 2016, \$7.5 million in trust funds was provided to the former conveyancing assistant using the pre-signed blank trust cheques. Guo discovered the theft when she could not find her bookkeeper to review her monthly trust reconciliation statements. She deposited approximately \$2.6 million of family money to address pressing real estate closing obligations. By early 2018, the trust shortage was fully eliminated by the family funds as well as \$4 million from an insurance policy that covered employee theft.

The hearing panel determined that Guo committed professional misconduct, finding that, over a two-year period, she failed to prepare monthly reconciliations of her pooled trust accounts within 30 days of the effective date of the reconciliation, and she withdrew funds from a trust account when there were insufficient funds held to the credit of the client, in a number of instances. Guo admitted failing to report three instances of trust shortages greater than \$2,500, and the panel found a fourth instance where an overdraft was caused by the theft. Guo was found to have withdrawn or authorized the withdrawal of \$1,870,123.08 in trust funds by way of debit memo, which is not permitted by the Law Society Rules. The debit memo transactions occurred while Guo was in China, and the panel found she made no effective arrangements to cover her practice, which meant she had no other way to close these transactions except by debit memo.

The panel found Guo had failed to properly supervise her bookkeeper and improperly delegated her trust accounting responsibilities to him. The bookkeeper was free to work in any manner he felt appropriate, including facilitating a massive theft of \$7,506,818 from trust. The panel found that the volume of her practice made it improbable Guo

could properly supervise the accounting department and employees.

The panel found that, after Guo discovered the theft, she misappropriated or improperly withdrew three separate clients' trust funds when there were insufficient funds on deposit to the credit of other clients. The total funds shortage for these three clients was \$649,423.24. The panel determined that Guo made decisions to close certain real estate transactions due to imminent closing dates, and she manipulated her trust account records in a way that allowed her to use other clients' funds to complete those transactions.

The panel determined that Guo breached her undertaking to the Law Society by failing to immediately open a new trust account for new client matters, depositing a total of \$196,613,345.22 into her trust account in connection with 165 new client matters and withdrawing \$7,269,159.28 in trust funds by way of one or more of 30 cheques that had not been signed by a second signatory. The also panel found that Guo had failed to comply with an interim order by depositing trust funds totalling \$24,446,106.29 into a trust account in connection with 28 new client matters.

## DISCIPLINARY ACTION

The Law Society submitted that the appropriate disciplinary penalty for misappropriation and disregarding undertakings to the Law Society and an order of the Benchers would be disbarment. Guo submitted that she was dealing with a theft of unprecedented magnitude, her actions were focused on protecting her clients and she deposited \$2.6 million of her own money to ameliorate some of the short-term consequences of the theft.

The hearing panel ordered that Guo be suspended for one year and that she pay costs of \$47,329.44. The panel accepted that Guo had experienced exceptional circumstances that mitigated her misconduct and that she believed that, by manipulating her trust funds, she could minimize the impact of the theft on her clients. The panel considered that most clients were eventually made whole. The panel found that disbarment was not required and reviewed other disciplinary cases involving findings of misappropriation, lack of supervision over clients' trust accounts and breaches of undertaking that did not result in disbarment.

*The Law Society and Guo have both applied to the Tribunal for a review of the hearing panel's decision on disciplinary action.*

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## SUMIT AHUJA

Langley, BC

Called to the bar: April 15, 2011

Discipline hearing: March 26-27, 2019 and December 17, 2020

Review date: March 12, 2020

Panel: Steven McKoen, QC (chair), Nan Bennett and Shona Moore, QC

Review board: Michael F. Welsh, QC (chair), John Lane, Geoffrey

McDonald, Nina Purewal and John D. Waddell, QC

Decisions issued: August 21, 2019 ([2019 LSBC 31](#)), June 26, 2020 ([2020 LSBC 31](#)) and October 28, 2021 ([2021 LSBC 44](#))

Counsel: Irwin G. Nathanson, QC, William B. Smart, QC, Trevor Bant and Julia K. Lockhart for the Law Society; Henry Wood, QC and Sandra L. Kovacs for Sumit Ahuja

## FACTS AND DETERMINATION

In March 2017, Sumit Ahuja failed to attend a chambers application and caused his office to lie to the court and to his clients regarding the reason. Over the ensuing nine-month period, Ahuja failed to follow accounting and billing rules with regard to 10 clients, including failures to deposit funds received from a client into a trust account. In four of those instances, Ahuja used some of the funds for personal expenses. Medical experts attested that, at the time of the conduct, Ahuja had severe alcohol and cocaine dependence disorders.

In March 2017, Ahuja self-reported to the Law Society, voluntarily removed himself from the practice of law and entered a residential facility for treatment of his addictions. After completing the residential program, Ahuja provided successive voluntary undertakings not to practise law and put in place a program of rehabilitation and drug and alcohol monitoring.

The hearing panel accepted Ahuja's admissions that his failure to attend a chambers application and failure to follow the accounting rules amounted to professional misconduct. The panel determined that the term "misappropriation" should be avoided in this case, accepting expert evidence that Ahuja's behaviour and decision-making processes were affected by his active addiction. While the use of trust funds for personal expenses constitutes serious professional misconduct, the panel characterized that misconduct as "conversion of client funds to his personal use while in active addiction."

## DECISION OF THE REVIEW BOARD

The Law Society sought a review of the hearing panel's characterization of the professional misconduct, submitting that the panel made an error of law by declining to characterize the misconduct as "misappropriation." It did not seek to review the findings of professional misconduct themselves or the facts that underlay them. The review board concluded that it had the jurisdiction to review the term by which professional misconduct is characterized and found that whether or not to apply the term "misappropriation" is a question of law that is reviewable for correctness.

The review board found that the hearing panel committed a legal error in reclassifying the misconduct to avoid calling it "misappropriation" and that the correct characterization of Ahuja's actions is misappropriation. It accepted the factual findings of the hearing panel that Ahuja took funds for his personal use while in active addiction and noted that this would be a factor to be considered at the disciplinary action phase of the hearing.

## DISCIPLINARY ACTION

The hearing panel ordered Ahuja:

1. be suspended for seven months;
2. continue the medical supervision agreement currently in place during the suspension and for a total period of five years;
3. have practice restrictions in place for one year following his suspension, including practising only as an employee of a law firm, not handling any trust funds and practising only in family law and immigration law unless the Law Society provides written permission; and
4. pay costs of \$10,000.

The panel considered the grave nature of Ahuja's conduct and his substantial professional conduct record including conduct prior to application to admission, a practice review, two citations, a voluntary undertaking not to practise law and a conduct review. The panel noted that Ahuja was in active addiction at the time he misappropriated his clients' money and failed to appear in chambers, and he has since sought help, completed a residential rehabilitation program and made restitution to all of his victims. The panel also considered 28 letters with character references submitted by Ahuja regarding his efforts at rehabilitation and his acknowledgement of his misconduct, as well as balanced these mitigating factors with the need to ensure the public's confidence in the legal profession.

## GLEN ORRIS, QC

Vancouver, BC

Called to the bar: June 28, 1973

Consent agreement accepted: [November 26, 2021](#)

## FACTS

Glen Orris, QC admitted that in the course of acting for a client in a criminal matter, he communicated with members of the jury panel to advance or protect his client's interest.

During a break in the court proceeding, the prospective jurors asked Orris procedural questions about the matter and commented on the particular circumstances of his client. Orris answered the questions, as well as made comments in support of his client.

## CONSENT AGREEMENT

Orris admitted his conduct constituted professional misconduct and agreed to be suspended for three weeks. In accepting the consent agreement, the chair of the Discipline Committee considered an agreed statement of facts and Orris' prior professional conduct record, which consisted of one conduct review for communicating and interacting with a juror in a trial during lunch breaks. ❖

## ELECTED BENCHERS

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### **First Vice-President**

Christopher McPherson, QC\*

### **Second Vice-President**

Jeevyn Dhaliwal, QC\*

Kim Carter  
Tanya Chamberlain  
Jennifer Chow, QC  
Cheryl S. D'Sa  
Lisa Dumbrell  
Brian Dybwad  
Brook Greenberg, QC\*  
Katrina Harry  
Lindsay R. LeBlanc  
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Steven McKoen, QC  
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Georges Rivard  
Kelly H. Russ  
Gurminder Sandhu  
Thomas L. Spraggs  
Barbara Stanley, QC  
Michael F. Welsh, QC\*  
Kevin B. Westell  
Sarah Westwood  
Gaynor C. Yeung

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