



# BENCHERS' BULLETIN

Keeping BC lawyers informed

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## 2012 ... it was a very good year

by Bruce A. LeRose, QC

"Gasp," 2012 is drawing to a close — where has the time gone? It seems like only yesterday that I was sitting down to pen my first President's View, and now here I am already mulling over my last opportunity to speak to lawyers as president of the Law Society of British Columbia. Being this is my last column, it seems only proper to reflect on the highlights of 2012.

2012 has been a very eventful year for the Law Society. In the spring, the BC Legislature passed substantial and significant amendments to the *Legal Profession Act*. These amendments allow the Law Society to be a more effective and transparent regulator of the legal profession, while at

such initiatives that include greater roles for articulated students and the unbundling of legal services. January 2013 will bring the public launch of the paralegal changes and the Law Society encourages lawyers to take up the opportunity to have their paralegals participate in the two-year pilot project with the courts.

In late October 2012, the Benchers approved a "road map" for a complete overhaul of Law Society governance. The plan will provide clear direction to the Benchers in terms of their distinct roles as directors of the Law Society, as regulators of the profession charged with protection of the public interest and, finally, as "trusted advisors" to the profession. These wide-ranging changes to how the Benchers govern will provide clear and objective policies and procedures so that the Benchers will be better equipped for each of the three roles that they are required to fulfill.

Finally, the Benchers have established a Legal Service Provider Task Force, which has been charged with the responsibility to consider the future of legal services regulation. Should the Law Society expand its regulatory authority to cover all non-lawyers who deliver legal services? Should it give up its s.15 responsibility for unauthorized practice and just regulate lawyers? Should it continue the status quo? These are big questions that demand thoughtful responses. Areas such as the educational qualifications and credentialing of non-lawyers will also have to be considered in this context. I am very pleased that the Benchers have agreed to appoint numerous representatives from various stakeholders to this task force so that the approach will be much more inclusive and holistic.

In conclusion, I want to say to all my friends and colleagues across this great province of ours that having the opportunity to be president of the Law Society for 2012 has been the single greatest honour of my life. My nine years as a Bencher have

### 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 on improvements to the *Bulletin* are always welcome — contact the editor at [communications@lsbc.org](mailto:communications@lsbc.org).

Electronic subscriptions to the *Benchers' Bulletin*, *Insurance Issues* and *Member's Manual* amendments are provided at no cost. Print subscriptions may be ordered for \$50 per year (\$20 for the newsletters only; \$30 for the Member's Manual amendments only) by contacting the subscriptions assistant at [communications@lsbc.org](mailto:communications@lsbc.org).

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the same time providing greater flexibility in our dealings with the profession.

This year also saw the final approval of the *Code of Professional Conduct for BC*. In March, the Benchers adopted the conflicts of interest provisions in the Federation of Law Societies' Model Code of Professional Conduct, with adaptations to improve its use in BC. The new *BC Code* will be in effect as of January 1, 2013.

In June, the Benchers approved comprehensive changes to the Law Society Rules in order to allow for an expanded scope of practice for "designated paralegals." The Benchers are determined to come up with ways to improve access to affordable legal services. Allowing paralegals to do more is the latest in a series of

been more personally rewarding than I can ever express. I want to acknowledge CEO Tim McGee, the management team at the Law Society and all of the hard-working staff who are so dedicated to helping the

Benchers fulfill their mandate to protect the public interest, as well as responding to the many needs of BC lawyers. Finally, I want to congratulate my successor, Art Vertlieb, QC, whom I have had the pleasure

of working with over the past nine years. I have no doubt that he will provide strong, decisive leadership in 2013, and will be a terrific ambassador for our profession. ❖

## Justicia launched in BC as firms invited to sign on

THE JUSTICIA PROJECT was officially launched in BC on November 20, 2012 with a meeting of law firm managing partners to introduce the first phase of the project.

Developed by the Law Society of Upper Canada, the Justicia Project is a voluntary program for law firms to identify and implement best practices to retain and advance women lawyers in private practice. It was created in response to evidence that women leave the profession at a higher rate than men in the first 10 years of practice.

Encouraged by the success of the Justicia Project in Ontario, the Law Society of BC, on the recommendation of the Retention of Women in Law Task Force, launched its own two-phase program.

Phase one is directed at national law firms with offices in BC that are already participants in Justicia in Ontario and

Alberta, as well as large regional firms that may be interested in the project. Phase two will be directed at all other BC firms.

Shayne Strukoff, managing partner at Gowlings, and Helena Plecko, associate at Gowlings, volunteered to drive the initiative on behalf of the Law Society. The project is further supported by the Equity and Diversity Advisory Committee, as well as members of the Justicia working group, McCarthy Tétrault's Lisa Vogt and Blakes' Bill Maclagan, who is also a Bencher.

Participating law firms will commit to achieving goals in four areas:

- Tracking gender demographics
- Reviewing/introducing flexible work arrangements and parental leave policies
- Adopting initiatives to foster women's networking and business development

• Promoting leadership skills for women  
 "Our aim is to bring firms together to share strategies and best practices," said Bruce LeRose, QC, president of the Law Society. "Based on its success in Ontario, Justicia will help advance the Law Society's strategic goal of supporting the retention of women lawyers."

"We encourage law firms of all sizes to lend their support to this important project," said Helena Plecko, associate at Gowlings. "We hope it will pave the way for systemic change in the legal profession that will address the realities women in private practice are facing."

Lawyers or law firms with questions about Justicia or how to participate should contact Michael Lucas, Manager, Policy & Legal Services at the Law Society of BC at [MLucas@lsbc.org](mailto:MLucas@lsbc.org). ❖



### Law Society Award

Three hundred thirty lawyers and judges attended the Bench & Bar Dinner on November 8.

A highlight of the evening was the presentation of the Law Society Award to Marvin Storrow, QC (left, with Society President Bruce LeRose, QC). The award is a bronze statue of Sir Matthew Baillie Begbie, cast by the late Pender Island sculptor Ralph Sketch.



# Pursuit of regulatory innovation an ongoing endeavour

by Timothy E. McGee

THE LAW SOCIETY of BC is frequently acknowledged as an innovator in the regulatory field. We were among the first legal regulators to address issues like unbundling of legal services, cloud computing and alternate business structures, for example. And we remain focused on setting and maintaining the highest standard when it comes to effective regulation in the public interest.

To achieve this, we are now in the midst of several initiatives that are intended to improve our efficiency and effectiveness as regulators.

The Law Society recently completed a thorough review of how we handle personal and private information. Taking into account the latest legislation and guidelines and with the help of privacy experts,

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we now have a comprehensive assessment, including policies and steps we can take to improve on our current level of privacy protection.

The Benchers have also recently undertaken a full review of our key performance measures — those public benchmarks established in 2007 to evaluate how we are delivering our core regulatory functions — to ensure they continue to be relevant and provide an appropriate level of accountability and transparency.

Another project on the go is a review of the services we provide to support lawyers through our practice advice group and our online resources. Our goal is to ensure that we are providing the best resources possible to assist lawyers in complying with our regulatory standards.

And while it would not be new to many law firms or other businesses, the Law Society is implementing a new state-of-the-art online document and records management system. This new capability will be crucial to helping us meet the goals we have set for the future efficiency and effectiveness of virtually all of our regulatory

activities.

Our investment in and commitment to these projects and others is part of our goal for continuous improvement in all we do. If you are interested in learning more about these or any other of the Law Society's initiatives, please contact us at [ceo@lsbc.org](mailto:ceo@lsbc.org).

## Opening the doors for public participation

ONE YEAR AGO this month, the Law Society's discipline and credentials hearings took on a new, more transparent face. Following a thorough application, screening and selection process, the Law Society named 21 members of the public who would sit on the hearing panels that discipline lawyers, and those that examine the fitness and character of people applying to become lawyers.

"As the legal regulator, being open and transparent is a key part of what we do," said Law Society President Bruce LeRose, QC. "We are deeply committed to regulating the profession in the public interest, and I want the public to see that."

The first hearings to include members of the new public pool were in December 2011. Since then, pool members have helped adjudicate 16 discipline hearings, and four credentials hearings.

"The learning curve was quite high," said Dan Goodleaf, a member of the public pool. "You're sitting with very seasoned, well-accomplished individuals. It is a bit daunting being put among them, with the expectation that you will be a co-equal on the panel. You are not window dressing, and you are not there to be subservient. You are there to be independent in your thought."

"For the public, having somebody like me as an outsider, hopefully will bring for them a sense of confidence, and a sense the old boys' network doesn't apply," said Goodleaf.

The members of the public who were selected to sit on the panels come from a wide range of academic and professional backgrounds. Goodleaf is a former Canadian Ambassador in Central America. He was also Canada's Deputy Minister of Indian and Northern Affairs. Among the other panel members, there are former mayors, a forestry executive, a policing consultant, university professors, chartered accountants, and more.

While the public hearing panel pool is new, the concept of having lay people helping to adjudicate hearings is not. The Law Society's hearing process already included some non-lawyers, by the inclusion of government-appointed Benchers. The public pool, however, expands the role the public plays in the regulatory process by ensuring that a non-lawyer is on each panel.

"Members of the public bring real value to our system," said LeRose. "With their diverse backgrounds, the public pool makes an already strong process, even stronger."

## Your fees at work: Professional Legal Training Course

THE LAW SOCIETY regularly highlights how annual practice fees are spent so that lawyers are aware of services to which they are entitled as well as programs that benefit from Law Society funding.

In this issue, we feature members' support for the Professional Legal Training Course, or PLTC.

The Law Society's PLTC has earned international recognition and has served as a model for bar admission programs all over the world. Instructors are all lawyers with a wealth of knowledge and practice experience. The 10-week course focuses on the development of skills, including advocacy, writing, interviewing, drafting, legal research, dispute resolution and problem-solving. Students complete numerous practical assignments on which they receive detailed feedback, and they are tested on four skills assessments.

PLTC also provides students with needed information on legal procedure,

firm management and professional responsibility. Students are tested on this knowledge in two written exams.

The skills and knowledge the students acquire at PLTC are supplemented in their articles and on the job after their call,

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*One of the highlights of PLTC is the mock civil trial, which allows students to prepare and act as counsel for a full trial in Supreme Court. Practising BC trial lawyers volunteer to sit as judges and give the students feedback.*

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ensuring new lawyers are better prepared for the realities of legal practice.

Students, or their articling firms, pay a reasonable, but below-cost fee, to take PLTC; the Law Foundation of BC contributes 15% of the annual cost, and the remaining amount is subsidized by BC lawyers through the annual practice fee.

Ensuring new lawyers have the skills required to practise law is critical to their initial and ongoing success and to the reputation of lawyers in general.

One of the highlights of PLTC is the mock civil trial, which allows students to prepare and act as counsel for a full trial in Supreme Court. Practising BC trial lawyers volunteer to sit as judges and give the students feedback. Other assignments have students analyzing legal problems, writing opinions, drafting contracts from scratch and interviewing new clients.

Student feedback on the program is collected after each session. In the words of one recent student, typical of the comments gathered, "This course does a fantastic job of providing practical skills useful to the early stages of one's practice that are not taught in law school. The materials are extremely well written and comprehensive. All of the assignments and assessments are very helpful, and it helps to practise these skills." (July 2012) ❖

### GRADUATES OF FOREIGN LAW SCHOOLS

## Number of Canadian students pursuing foreign law degrees on the rise

*Students advised to be aware of the benefits and implications of studying outside Canada*

ADMISSIONS STAFF AT the Law Society have seen a steady increase in the number of Canadians who are earning their law degrees outside the country and many of those schools are aggressively marketing to international candidates.

And while studying abroad can have great appeal for many reasons, the Law Society is encouraging students to do their research before attending law school in a country other than Canada.

"Studying law at an international university is appealing to more and more students every year," said Alan Treleven, Director of Education & Practice with the Law Society. "We are certainly not suggesting foreign law schools provide any less of an education, but we want to make

sure that students know if they graduate from a law school outside of Canada, it could be months, or even years, before they can apply to practise law in BC."

Students with international law degrees who want to practise law at home must first apply for a Certificate of Qualification from the National Committee on Accreditation, a standing committee of the Federation of Law Societies of Canada. The Federation, through the NCA, has a mandate from Canada's law societies to assess the education and experience of people with credentials from outside of Canada.

"The purpose of the certification process is to assess whether students trained elsewhere have the same knowledge and skills as graduates of Canadian law schools

and are therefore ready to enter bar admission programs here in Canada. However, obtaining that certificate from the NCA involves payment of fees, as well as considerable time to satisfy additional academic requirements," said Treleven. "Students have to write a series of examinations and, in some cases, they could also be required to complete more course work at a Canadian university."

After obtaining a Certificate of Qualification from the NCA, a student in BC can apply to the Law Society Admission Program.

More information can be found on the Law Society website or NCA website: [flsc.ca/en/nca](http://flsc.ca/en/nca). ❖

# Designated paralegals pilot project to begin January 1, 2013

## *Reforms aim to improve access to justice*

SINCE THE BENCHERS approved new regulations in the summer for lawyers who supervise paralegals, the Law Society's Paralegal Pilot Project Working Group has been finalizing the details of the project in preparation of next month's launch. In January, designated paralegals can begin to make appearances in court to speak to certain family law matters. That pilot project is in addition to the changes that allow designated paralegals to give legal advice, something that has been permitted since July.

### MEASURING SUCCESS

When the *Benchers' Bulletin* last wrote about the paralegal reforms in September, one of the chief unanswered questions was how the changes would be evaluated. At the October 26 Benchers meeting, the working group proposed a two-stream evaluation process to help gauge the success of the reforms.

The first stream will evaluate the new model from an access to justice perspective. The goal of the project is to help make legal services more affordable for the public, so it is important to measure whether the reforms are helping to meet that mark.

The working group suggested data should be collected via the Annual Practice Declaration and a web-based survey. The Practice Declaration will ask, for example, whether lawyers supervise designated paralegals, how many, and whether they give legal advice and/or appear in court. The survey will ask how many clients used designated paralegals, were the clients satisfied, and does the lawyer feel he or she could supervise more than two designated paralegals, the maximum currently allowed.

The second stream will focus on protection of the public. While the Law Society wants to increase the affordability of legal services, it cannot be done at the

expense of effective regulation of the profession in the public interest.

The second evaluation will track and analyze complaints related to a lawyer's use of designated paralegals. The data will be a sub-file within a lawyer's complaint file and will list the name of the designated paralegals, their function, the area of law they were working in, and the number



of designated paralegals the supervising lawyer was overseeing at the time of the complaint. This information will help inform future discussions about whether to modify the Law Society rule that caps the number of designated paralegals per lawyer at two.

### PARALEGALS IN FAMILY COURT

On September 24, Chief Judge Thomas J. Crabtree of the Provincial Court wrote

President Bruce LeRose, QC to advise the court would participate in the two-year paralegal pilot project. Beginning January 1, 2013 the Provincial Court will grant designated paralegals a limited right of audience in family law matters in the Cariboo/Northeast District and Surrey.

Chief Justice Robert J. Bauman had already offered the Supreme Court's willingness to participate in the Vancouver, New Westminster and Kamloops registries.

As designated paralegals begin to make their first court appearances, there are some important guidelines to be followed. At their first appearance in court, designated paralegals are required to provide the court with an affidavit from the supervising lawyer stating:

- the paralegal has the training and experience to deal with the issue at hand;
- the materials used by the paralegal have been reviewed by the supervising lawyer;
- the client consents to the application being dealt with by a paralegal.

Lawyers also need to be available to the paralegal by telephone during the day of the proceeding, and paralegals must be trained on court protocol before making an initial appearance.

The kinds of applications paralegals are allowed to address are intended to be procedural and straightforward. In Supreme Court, they

include uncontested renewal of notice of family claim, uncontested application for alternative methods of service, and applications for which notice is not required.

Designated paralegals can also speak to a small number of contested procedural matters, including applications to compel production of documents for inspection and copying unless the objection to production is on the grounds of privilege, and applications to change the location of an

examination for discovery.

In Provincial Court, designated paralegals may appear to deal with uncontested first appearances, uncontested consent orders requiring attendance before a judge, and uncontested applications for paternity testing.

They may also appear on certain contested procedural matters in Provincial Court, including contested applications to compel production of a financial statement or to compel production of financial documents.

#### PARALEGALS GIVING LEGAL ADVICE

The pilot project that allows designated paralegals to make limited courtroom appearances is one element of the Law Society's initiative for lawyers who supervise paralegals. The other allows designated paralegals to give legal advice directly to clients, something that was not permitted prior to the changes made to

the *Professional Conduct Handbook*.

In any area of law where a supervising lawyer deems a designated paralegal competent, the paralegal is now permitted to give legal advice to clients. For example, a designated paralegal could provide oral

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*While the Law Society wants to increase the affordability of legal services, it cannot be done at the expense of effective regulation of the profession in the public interest.*

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advice to a client during a meeting, or prepare a document such as a contract or will and provide it directly to the client.

#### GUIDELINES FOR WORKING WITH DESIGNATED PARALEGALS

As lawyers move ahead with "designating" paralegals and allowing them to give

legal advice and appear in court, they will be guided by the provisions and guidelines contained in the Law Society Rules and the *Code of Professional Conduct* (which replaces the *Professional Conduct Handbook* on January 1, 2013.)

Lawyers should remember they bear overall responsibility for the conduct of the designated paralegals they supervise. Any mistakes made by the paralegal are the lawyer's responsibility.

The paralegal pilot project will run for two years. In 2015, a review will be conducted to determine what worked, what did not work, and whether it should be continued or expanded into other areas of law.

For more information about the new rules and regulations governing lawyers who employ paralegals, see the [Law Society's website](#). ❖

## In Brief

### JUDICIAL APPOINTMENTS

**Michael Manson**, a lawyer with Smart & Biggar in Vancouver, was appointed a judge of the Federal Court, to replace Mr. Justice D.R. Campbell, who elected to become a supernumerary judge.

**David Graham**, a lawyer with Koffman Kalef LLP in Vancouver, was appointed a judge of the Tax Court of Canada, replacing Mr. Justice L. Little, who retired.

The Honourable **Robin Baird**, a judge with the Provincial Court of BC in Surrey, was appointed a judge of the Supreme Court of BC in Nanaimo. He replaces Madam Justice J.A. Power, who was transferred to Victoria to replace Mr. Justice R.W. Metzger, who elected to become a supernumerary judge.

The Honourable **Kenneth Ball**, a judge of the Provincial Court of BC in Surrey, was appointed a judge of the Supreme Court of BC in Vancouver, replacing Mr. Justice B.M. Davies, who elected to become a supernumerary judge.

**Gordon Funt**, a lawyer with Fraser Milner Casgrain LLP in Vancouver, was appointed a judge of the Supreme Court of BC, replacing Mr. Justice D.C. Harris (Vancouver), who was appointed to the Court of Appeal.

**John Steeves**, a sole practitioner in Vancouver, was appointed a judge of the Supreme Court of BC, to replace Madam Justice L.A. Loo (Vancouver), who elected supernumerary status.

**Andrea Brownstone**, a staff lawyer and manager with the Law Society of BC, was appointed a judge of the Provincial Court of BC.

**Bonnie Craig**, a prosecutor with the Tsawwassen First Nation, was appointed a judge of the Provincial Court of BC.

**Roger Cutler**, a Crown counsel lawyer with the Criminal Justice Branch of the BC government, was appointed a judge of the Provincial Court of BC.

**Kathryn Denhoff**, a partner with Davis LLP in Vancouver, was appointed a

judge of the Provincial Court of BC.

**William Jackson**, QC, administrative Crown counsel with the Criminal Justice Branch of the BC government and a Life Bencher of the Law Society, was appointed a judge of the Provincial Court of BC.

**Ronald Lamperson**, a partner at Marshall and Lamperson in Qualicum Beach, was appointed a judge of the Provincial Court of BC.

**Jennifer Oulton**, a Crown counsel lawyer with the Criminal Justice Branch of the BC government, was appointed a judge of the Provincial Court of BC.

**Garth Smith**, a prosecutor with the Public Prosecution Service of Canada, was appointed a judge of the Provincial Court of BC.

**James Sutherland**, a partner with Sutherland Jetté Barristers in Vancouver, was appointed a judge of the Provincial Court of BC. ❖

## Law Society ushers in new president, Art Vertlieb, QC



Art Vertlieb, QC and wife Bev Briscoe

AS OF JANUARY 1, 2013, Art Vertlieb, QC will take the reins as president of the Law Society of BC, capping off many years of dedicated service to the organization.

"I am incredibly proud of the work that is done by the Law Society, Benchers and the profession as a whole," he explained recently. "It is a privilege to be able to serve as president."

Vertlieb came to Vancouver by way of Hamilton, Ontario, where he was born, and Tucson, Arizona, where he moved with his family at the age of 13. The next eight years proved to be life-changing for him as he completed high school and then an undergraduate degree at the University of Arizona.

"I loved the energy of the US and the ambition of the people around me," recalled Vertlieb, "and it had a dramatic impact on my life." While in university, he campaigned and was elected student body

vice-president and was very active in campus life, including touring with the football team as a student representative.

However, it was tragic events that brought him back to Canada. The assassinations of John F. Kennedy, Martin Luther King and Robert Kennedy, whom Vertlieb had heard speak in person, were a shock. "The violence stunned me," he said.

Vertlieb returned to Canada to attend law school at Osgoode Hall. Asked why he decided to become a lawyer, he was quick to answer "Perry Mason," referring to the fictional lawyer of the television show of the same name. "He was brilliant and led an exciting life and it seemed amazing to me that he could represent and fight for people with such success."

Vertlieb has certainly brought that Perry Mason zeal to his practice and the Law Society. As a partner with Vertlieb Dosanjh in Vancouver, his focus is on personal injury law, medical negligence, professional disputes and criminal law.

Elected a Bencher in 2004, Vertlieb has a long history of committee work with the Law Society and is currently chair of the Finance Committee. He will move from vice-chair to chair of the Executive Committee in the new year, and he is also vice-chair of the Governance Review Task Force as well as a member of the Appointments Subcommittee and Litigation

Subcommittee.

Outside the Law Society, he recently capped a 10-year stint as a governor of the American Association of Justice and is an elected fellow of the International Academy of Trial Lawyers and a member of the Yukon Law Society Discipline Committee.

He is also a former president and founding vice-president of the Trial Lawyers Association of BC and a former chair and founding member of the Lawyers Assistance Program of BC.

Vertlieb's passion has long been with the issue of access to justice, and he intends to make that the focus of his term as president.

"I have spent more time on access issues than any other at the Law Society," said Vertlieb. "It's a big issue, obviously, and I want to see the Law Society continue the fine work that has been done to increase the availability of affordable legal services."

Vertlieb has played a pivotal role in recent enhancements to the scope of duties that can be performed by paralegals and articulated students. In fact, he chaired the very first Law Society task force that considered this issue years ago.

In addition to his inspiring youth, Vertlieb is quick to credit his family for his success. His wife, well-known corporate and public director Bev Briscoe, is an intelligent and highly qualified sounding board for Vertlieb. Their sons, Dan, Mike and Dave, round out the package. ♦

## Bencher by-election results



**LYNAL E. DOERKSEN** has been elected as a Bencher for Kootenay county in the November 15, 2012 by-election. Doerksen's one-year term begins on January 1, 2013, when Bruce LeRose,

QC completes his term as president and his final term as a Bencher.

Doerksen was called to the bar in Alberta in 1990, where he gained a broad

range of practice experience. In 2005, he joined the BC bar and became a Crown prosecutor in Cranbrook, where he remains today.

Doerksen has served as a volunteer for many organizations, including the Criminology Advisory Committee at the College of the Rockies, CBA Law Day, Cerebral Palsy Association of Ft. McMurray and many triathlon events. He is the chair of the CBABC Court Services Committee and a past president of the Kootenay Bar Association and the Fort McMurray Bar Association. He is

currently the president of the North Star Skating Club of Kimberley.

In his election statement, Doerksen noted, in part: "Despite living most of my life in Alberta I have never looked back after moving here in 2005. I am thrilled to live in and be a part of the Kootenays.... Although my career in BC has been entirely in criminal prosecutions, I have not forgotten the challenges of the general practitioner and believe I am well suited to address and understand the concerns of the entire Kootenay Bar." ♦



## News from the Law Foundation

### SCOTIABANK COMMENDED FOR RATE OF RETURN

Law Foundation Chair Margaret Sasges commends Scotiabank for its commitment to paying a competitive rate of return on lawyers' pooled trust accounts. Scotiabank agreed to a new interest agreement effective December 1, 2012, that will provide a welcome increase to the Foundation's overall trust revenues.

The Law Foundation thanks Paula Merrier, Director Western Canada, and Evonne Macleod, Senior Manager of Global Transaction Banking, at Scotiabank for the leadership shown in making this new agreement possible.

Increased revenues enable the Foundation to fund programs that make the justice system accessible to the people of British Columbia. The funded programs include professional legal education, public legal education, law reform, legal research, legal aid and law libraries.

The Law Society, the Canadian Bar Association (BC Branch) and the Law Foundation encourage lawyers to consider which financial institutions provide the best support to the Law Foundation when deciding where to place their trust accounts.

### NEW BOARD CHAIR



Tamara Hunter

At its November meeting, the Law Foundation Board of Governors approved Tamara Hunter as its new chair. Hunter is a litigation lawyer at Davis and Company in Vancouver and practises in the areas of administrative law,

privacy law, professional regulation and commercial litigation. She began her legal career as a law clerk to Chief Justice Lamer of the Supreme Court of Canada and was called to the bar in 1992. She has represented both private and public sector organizations before the Office of the Information and Privacy Commissioner and in related litigation.

### LAW SOCIETY APPOINTMENTS

As of January 1, 2013, Fred Fatt is the Law

Society appointment to the Law Foundation Board of Governors for Cariboo County. Fatt was called to the bar in 1981. He has a diversified legal aid practice, and has regularly been counsel on circuit courts outside of Prince George. For a number of years, he has been the supervising lawyer of the Law Foundation-funded poverty law advocacy program in Prince George, operated by Active Support Against Poverty.

The Society's appointment for Westminster County is Ajeet Kang, who was called to the bar in 1994. Kang is the managing partner of Kang and Company, a small firm in Surrey. She practises in the areas of immigration, family and criminal law, is a family law mediator, and has worked as a federal and provincial prosecutor. Kang is very involved in the South Asian community, speaking Punjabi and Hindi. She founded CORSAs, a not-for-profit organization that works with South Asian youth at risk. She has also served on the BC Review Board.

### PROVINCIAL COURT EXTERNSHIPS

One of the continuing professional legal

education programs that the Law Foundation contributes to is the Provincial Court externship. The externships are a semester-long judicial internship offered for credit to third-year students at the UBC Faculty of Law in partnership with the Provincial Court of BC.

The students receive a week-long orientation to the court, delivered by judges, and then spend the remainder of the semester working in an assigned courthouse four days per week. Students observe the operation of the court, undertake legal research to support the work of the judiciary, and observe the judicial decision-making and court processes. Students also participate in a seminar offered by the Faculty of Law that provides an opportunity to discuss and analyze the work they have done. Students consistently describe the experience as eye-opening and very valuable.

As part of the program, students travel with a judge to one of the circuit courts that serve some of the more remote rural areas of the province. The Law Foundation makes an annual grant that funds the travel costs for those students. ❖

### Hon. Kenneth E. Meredith

The Honorable Kenneth E. Meredith passed away on December 3, 2012 at the age of 90. Meredith was a Bencher from 1964 to 1973 and received the Law Society Award in 2002 (right, with 2002 Law Society President Richard Gibbs, QC).

When announcing Meredith would receive the award, the *Bencher's Bulletin* stated:

Mr. Meredith's career has embraced 23 years of practice as a commercial law lawyer in Vancouver, 10 years as editor of the *Advocate*, eight years as a Bencher and over 20 years as a Justice of the Supreme Court of BC.

His vision and commitment led to the establishment of a legal aid plan that has served British Columbians for the past 30 years and to founding of the Law Foundation of British Columbia in 1969, which has played a critical role in funding legal aid, law libraries, legal education, legal research and law reform in the province.



## DISCIPLINE ADVISORY

## Improper to seek withdrawal of complaint to the Law Society

*Discipline advisories are designed to inform lawyers about conduct that can lead to discipline. The most effective way to receive Discipline advisories is to subscribe to the RSS feed. The Law Society also provides RSS feeds for News releases, hearing reports, Highlights and Fraud alerts.*

THE *PROFESSIONAL CONDUCT Handbook* prohibits a lawyer from improperly obstructing or delaying Law Society investigations (Chapter 13, Rule 3). This includes attempting to have a complainant withdraw a complaint to the Law Society as part of the settlement of a civil dispute, or otherwise offering to pay money to a complainant to withdraw a complaint.

Such offers or agreements interfere with the duty of a regulatory body to protect the public interest by investigating

complaints about the conduct or competence of the people it regulates. The agreements are also void and not enforceable in the courts: *Re Sandra Thompson Family Trust*, 2011 ONSC 7056.

It is a discipline violation for a lawyer to enter into such an agreement or to offer an inducement to withdraw a complaint or to not make a complaint: *Law Society of BC v. Gerbrandt*, [1993] LSDD No. 190.

Rule 3.2-6 of the upcoming *Code of Professional Conduct for BC* stipulates that:

A lawyer must not ... wrongfully influence any person to prevent the Crown or regulatory authority from proceeding with charges or a complaint or to cause the Crown or regulatory authority to withdraw the complaint or stay charges in a criminal or quasi-criminal proceeding.

A "regulatory authority" includes professional and other regulatory bodies.

While lawyers are free to settle civil disputes to which they are a party, they may not seek as part of that settlement to curtail in any way the right of a person to bring a complaint to the Law Society or to continue it. ❖

## Unauthorized practice of law

*UNDER THE LEGAL Profession Act, only trained, qualified lawyers (or articulated students 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 omission in the legal work or claims of theft by unscrupulous individuals marketing legal services.*

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

From August 14 to November 13, 2012, the Law Society obtained undertakings from eight individuals and businesses not to engage in the practice of law.

The Law Society has obtained orders prohibiting the following individuals and businesses from engaging in the unauthorized practice of law:

- The Law Society received information that **Bankson Cheung**, aka **Bankson Zhang** and **Weihua Consulting**

**Inc.**, dba **Weihua Services Centre** and **www.weihua.ca**, of Richmond, provided legal advice and offered to prepare various legal documents, including immigration applications, separation and other divorce documents, and corporate documents. They have consented to an order not to engage in the practice of law as defined in section 1 of the *Legal Profession Act* and not to falsely represent themselves as counsel, lawyers, a law firm or a law corporation.

- **Jacqueline Levesque**, of Prince George, is a former lawyer who resigned in the face of disciplinary proceedings in 2010. In 2012, the Law Society received information that Levesque provided legal services to a collection company and appeared in court on its behalf. Levesque consented to an order prohibiting her from engaging in the practice of law for or without a fee, including giving or offering legal advice, negotiating the settlement of a claim for damages, drafting legal

documents and representing herself as a lawyer or otherwise capable of practising law. Levesque is prohibited from commencing, prosecuting or defending an action in any court, unless acting on her own behalf. Levesque must also inform the Law Society of her involvement in any legal matter whatsoever, except where she is representing herself without counsel. These prohibitions will remain in place until Levesque is reinstated as a member in good standing with the Law Society.

- The Law Society received information that **Grant Fathie**, of Vancouver, represented himself as counsel and solicitor for a party to a motor vehicle accident. Fathie consented to an order prohibiting him from falsely representing himself as a lawyer, counsel, solicitor, advocate or in any other manner that suggests he is entitled to or capable of engaging in the practice of law. Fathie was also ordered to pay the Law Society its costs. ❖

PRACTICE TIPS, by Dave Bilinsky, Practice Management Advisor

## The Freeman-on-the-Land movement

♪ *we don't need you  
or your rules – this is ours  
there's something to die for...* ♪

Lyrics, music and recorded by Integrity

### WHO ARE THE FREEMAN-ON-THE-LAND?

This is a new movement that has important implications for both lawyers and notaries. It is not just another fringe group in society. Freeman-on-the-Land is listed on the FBI's domestic terror watchlist ([www.fbi.gov/stats-services/publications/law-enforcement-bulletin/september-2011/sovereign-citizens](http://www.fbi.gov/stats-services/publications/law-enforcement-bulletin/september-2011/sovereign-citizens)). People who have been linked to this movement include Terry Nichols and Timothy McVeigh (of the 1995 Oklahoma City bombing).

According to the FBI: "Since 2000, lone-offender sovereign-citizen extremists have killed six law enforcement officers. In 2010, two Arkansas police officers stopped sovereign-citizen extremists Jerry Kane and his 16-year-old son Joseph during a routine traffic stop on Interstate 40. Joseph Kane jumped out of the vehicle and opened fire with an AK-47 assault rifle, killing both officers."

### THESE ARE NOT JUST PEOPLE WITH EXTREMIST VIEWS

"Freemen" (or Sovereign Citizens, Living Souls or Natural Persons, as they sometimes call themselves) believe that all statute law is contractual. They further believe that law only governs them if they choose or consent to be governed. By implication, they believe that, by not consenting, they can hold themselves independent of government jurisdiction. These individuals believe that they can live under "common (case) law" and "natural laws" (per Wikipedia).

Freemen may number up to 30,000 in Canada and hundreds of thousands in the United States. They believe they can avoid taxes, mortgages, utility bills and more. They state that they have an unfettered right to travel (hence their belief that they do not need driver's licences, licence plates or insurance). They believe

that government-issued identification is somehow different from the "natural person." They commonly list their names in the format of "First:Last" (using a colon in between). They are loosely affiliated with Canadian "detaxers," whose tenet is that income taxes do not have to be paid to the government.

### COMMON SYMBOLS

Freeman-on-the-Land follows a common formula. Symbols that are associated with the movement, and which are found on their documents, include: Biblical references and religious threats, postage stamps placed on documents, Uniform Commercial Code (UCC) citations in the US, fingerprints and "blood seals" affixed to documents. They use names for documents that are either obscure or not recognized in any legal text.

### CLAIMS OF THE FREEMAN MOVEMENT

Freemen claim that the US government (and, in Canada, the Bank of Canada) has established secret bank accounts for every person. This idea relies on their "theory of redemption." For example (from [www.policemag.com/channel/patrol/articles/2012/09/sovereign-citizens-a-clear-and-present-danger.aspx](http://www.policemag.com/channel/patrol/articles/2012/09/sovereign-citizens-a-clear-and-present-danger.aspx)):

This theory claims that the United States went bankrupt in 1933 when it chose to no longer use the gold standard to back up its paper currency. Needing collateral to trade and conduct commerce with other countries, the United States began to use citizens as collateral to ensure the value of its money. Subsequently, secret bank accounts, containing millions of dollars, were supposedly established by the United States Treasury Department on behalf of each citizen, or "strawman," used as collateral. Redemption is used as a gateway by sovereigns to commit various fraudulent acts all in an attempt to "redeem their strawman" and access these non-existent secret Treasury accounts to satisfy various debts, including mortgages, cars, and credit cards.

### PAPER "ATTACKS"

Notwithstanding that the Freemen reject the authority of the state, they do file many private prosecutions and claims of legal rights in the courts. Typically, they



seek costs and orders against public officials, peace officers and whoever seems to be standing in their way:

The filing of frivolous lawsuits and liens against public officials, law enforcement officers and private citizens, on the other hand, has remained a favorite harassing strategy. These paper "attacks" intimidate their targets and have the beneficial side effect of clogging up a court system that sovereign citizens believe is illegitimate. Frivolous liens became such a problem in the 1990s that a majority of states were forced to pass new laws to make filing them illegal, their removal easier, or both. Today, eager sovereign

*continued on page 14*

# The Code of Professional Conduct for British Columbia

## *An ethical guide for lawyers*

ON JANUARY 1, 2013 the Law Society of BC will retire the *Professional Conduct Handbook*. Adopted in 1993, the *Handbook* has been the ethical guide for the legal profession in BC. Replacing it is the *Code of Professional Conduct for British Columbia (BC Code)*.

The *BC Code* is the result of years of work, both at the national and provincial level. While the ethical principles

contained in the *Professional Conduct Handbook* have been preserved in the *BC Code*, the new document should provide more detailed guidance for lawyers facing an ethical dilemma.

### A PUSH FOR HARMONIZED ETHICAL STANDARDS

The origins of the new *BC Code* date back more than eight years. In 2004, there was

growing awareness among provincial law societies, as well as their coordinating body, the Federation of Law Societies of Canada, that the Canadian legal profession needed greater uniformity among ethical and professional codes of conduct.

"Mobility was the primary issue," explained Jack Olsen, an ethics advisor with the Law Society. In 2005, the Law Society appointed Olsen and Life Bencher David



*Gavin Hume, QC was the chair of the Federation's Standing Committee on the Model Code of Professional Conduct.*

Zacks, QC as BC's representatives on the committee that set out to work on a national model code of conduct upon which law societies could base their provincial codes.

"The whole idea of mobility has gained great momentum in the past 10 to 15 years, with lawyers seeking the ability to readily move from one province to another. With that comes the question of uniform standards," said Olsen. "If lawyers are moving between provinces and territories, and the standards are dramatically different, it is going to require significantly more adjustment."

### THE MODEL CODE OF PROFESSIONAL CONDUCT AND CONFLICTS

Following considerable effort at both the national and provincial level, the Federation adopted most sections of the *Model Code* in 2009. Provisions that dealt with the future harm exception to the requirement of confidentiality were adopted in 2010. But the matter of conflicts of interest proved a sticking point. Those provisions were not adopted by the Federation until 2011, and even today, the debate is not over.

The issue surrounding conflicts boiled down to a difference of opinion between the Canadian Bar Association and the Federation when it came to the section that dealt with acting against current clients.

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*"The whole idea of mobility has gained great momentum in the past 10 to 15 years, with lawyers seeking the ability to readily move from one province to another. With that comes the question of uniform standards. If lawyers are moving between provinces and territories, and the standards are dramatically different, it is going to require significantly more adjustment."*

—Jack Olsen

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The Federation, bearing in mind the mandate of law societies to protect the public interest, was of the view that, in order to act against a current client, a lawyer must have client consent. The advisory committee on conflicts recommended the following:

## Law Society and CLE provide free education on new BC Code

The Law Society and Continuing Legal Education Society of BC are teaming up to offer two free online courses for lawyers on the *Code of Professional Conduct for British Columbia (BC Code)*. The *BC Code* comes into effect January 1, 2013, replacing the *Professional Conduct Handbook*.

- Part one is offered on January 15, 2013 and repeated on January 29, 2013. Delivered by Life Bencher Gavin Hume, QC and Law Society Practice Advisor Lenore Rowntree, this course will provide a general introduction to the *BC Code* and then discuss the provisions surrounding confidentiality and conflicts.
- Part two is offered on February 6, 2013 and repeated on February 12, 2013. Delivered by Life Bencher Gavin Hume, QC and Law Society Practice Advisor Barbara Buchanan, this course will examine the relationship between lawyers and the Law Society, the justice system and others under the new *BC Code*, as well as aspects of the business of law.

Both parts run approximately 90 minutes and are offered via CLE-TV. These interactive courses count towards Continuing Professional Development credit in the area of professional responsibility and ethics. Lawyers can register via the CLEBC website: [cle.bc.ca/Courses](http://cle.bc.ca/Courses).



Lenore Rowntree



Barbara Buchanan

A lawyer must not represent a client whose interests are directly adverse to the immediate legal interests of a current client — even if the matters are unrelated — unless both clients consent.

The Canadian Bar Association was of a different view. It argued the Federation's approach was rigid and overly broad and that, in unrelated matters, client consent should not be required if the lawyer believed there was no conflict of interest and there was no real or substantial risk to the representation of a client.

The issue was referred to the Federation's Standing Committee on the Model Code of Professional Conduct. Committee chair and BC Life Bencher Gavin Hume, QC said the Federation ultimately adopted a rule that favoured obtaining client consent. "The Federation took that position because of its public interest perspective," said Hume, who is also the Law Society's

representative to the Federation Council.

However, the debate over acting against current clients is not over. Hume points to a case going to the Supreme Court of Canada, *Canadian National Railway v. McKercher LLP*.

That case involves a class action lawsuit against Canadian National Railway and others. The representative plaintiff, Gordon Wallace, alleged prairie farmers had been over-charged for grain transportation for the last 25 years. When the claim was launched, Wallace's law firm, McKercher LLP, was also acting for Canadian National Railway on several other matters, and CN applied to have McKercher LLP disqualified from acting for Wallace.

"All of this is going to be resolved in a case coming before the Supreme Court of Canada," said Hume. "So the debate continues."

*continued on page 14*

*Code of Professional Conduct ... from page 13*

## THE BC CODE

In BC, the *Model Code* was carefully reviewed by the Ethics Committee and put out to the profession for analysis and comment. The Benchers approved the portions of the code in April 2011 that did not deal with conflicts of interest, and then adopted the conflicts portion in March 2012. Some sections of the *Model Code* were modified to improve its use in BC.

"We took the approach that, if it was important or unique to BC, we would make a change," explained Hume.

One instance where the *BC Code* differs from the *Model Code* is in marketing. The *Model Code* lists specific activities that

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*"The principles are the same, but the manner of expressing those principles is better,"*

—Gavin Hume, QC

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could contravene the rules, for example suggesting superiority over other lawyers. The *Model Code* also gives explicit guidelines regarding the advertising of fees. The marketing rules in the *BC Code*, while not dissimilar in intent, are considered more liberal than their national counterparts and do not specifically deal with those issues.

Hume stresses, however, that the *BC Code* is a "living document" and subject to change. "We are going back to the Federation to propose changes to reflect our thinking, but if they don't accept it, then BC may well move back to the *Model Code* standard."



Jack Olsen

## THE BC CODE AND THE PROFESSIONAL CONDUCT HANDBOOK

The *BC Code*, like the *Professional Conduct Handbook* that came before it, is the regulatory guide regarding lawyers' ethical

obligations. Olsen says, in his experience, ethics are an important part of lawyers' professional lives.

"We have over 6,000 inquiries a year from members relating to practice and ethical questions," said Olsen. "And that certainly is an indication that lawyers are very much alive to the ethical questions that can arise in practice."

The *BC Code* has been designed as a reference tool to help assist lawyers and the Law Society in answering those ethical questions. The ethical guidelines familiar from the *Handbook* have been preserved in the *BC Code*, but they have been expressed in a way that is expected to make it easier for the profession to use.

"The principles are the same, but the manner of expressing those principles is better," said Hume. He describes the *Handbook* as a kind of "statutory" document, similar to legislation. The *BC Code*, on the other hand, provides a rule and then additional commentary on how the rule operates.

For example, the rule in the *BC Code* regarding acting against former clients corresponds to that in the *Handbook*, but the *BC Code* provides the following commentary:

This Rule prohibits a lawyer from attacking legal work done during the retainer, or from undermining the

client's position on a matter that was central to the retainer. It is not improper, however, for a lawyer to act against a former client in a matter wholly unrelated to any work the lawyer has previously done for that person if previously obtained confidential information is irrelevant to that matter.

"This is going to be of greater assistance to the profession because there will be more explanation provided with respect to the intent of a particular rule," said Hume.

## IMPLEMENTATION ACROSS CANADA

BC is one of six Canadian provinces that have either adopted or implemented the *Model Code*. Also on the list are Alberta, Manitoba, Saskatchewan, Nova Scotia, Newfoundland and Labrador. In the other provinces, the code is still under review.

"Canadian lawyers are becoming more and more mobile every year," said President Bruce LeRose, QC. "Harmonizing the ethical standards across the country is a big improvement on the current patchwork of ethical rules and regulations."

Applying the same ethical standards across the country is one of several national initiatives aimed at standardizing the overall regulatory framework for lawyers. LeRose also points to the pilot project designed to test uniform standards for disciplinary regulation, as well as efforts to create national standards for admission to the profession.

"The Law Society of BC has been deeply involved in these initiatives and I am glad we continue to be a leader among Canadian law societies," said LeRose. "Harmonizing our standards should help create a more effective, efficient legal profession." ♦

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*Freeman-on-the-Land ... from page 11*

citizens can use the Internet to download a variety of boilerplate forms and documents to wield against the government. More adventurous types can matriculate at "schools" such as the Erwin Rommel School of Law; additionally, a number of activists, ranging from David Wynn Miller to The Aware

Group, hold seminars around the country to teach people — for a price — about the latest tactics and weapons. ([www.adl.org/learn/ext\\_us/SCM.asp?LEARN\\_Cat=Extremism&LEARN\\_SubCat=Extremism\\_in\\_America&xpicked=4&item=sov](http://www.adl.org/learn/ext_us/SCM.asp?LEARN_Cat=Extremism&LEARN_SubCat=Extremism_in_America&xpicked=4&item=sov))

Freemen rely on bogus documents, such as an "ecclesiastical notice of private agreement" (see [www.scribd.com/doc/](http://www.scribd.com/doc/68105762/Ecclesiastical-Notice-of-Private-Agreement)

[68105762/Ecclesiastical-Notice-of-Private-Agreement](http://www.scribd.com/doc/68105762/Ecclesiastical-Notice-of-Private-Agreement) for an example of one such document against Clarke Burnett, in his capacity as a crown prosecutor) or a mandatariat (a demand made on a peace officer to produce his or her oath of office and qualifications to a Freeman).

They also seek to file liens against

*continued on page 15*

*Freeman-on-the-Land ... from page 14*

individuals, which can severely damage a person's credit rating. Many individuals who have been the subject of these attacks seek to remove their names from public directories for their own protection. For example, in *Meads v. Meads*, 2012 ABQC 571, the cover page of the reasons for decision states:

**Editorial Notice:** On behalf of the Government of Alberta **personal data identifiers** have been removed from this unofficial electronic version of the judgment.

In *Meads*, Associate Chief Justice J.D. Rooke goes into great detail regarding the "Organized Pseudolegal Commerical Argument ["OPCA"] Litigants" and is an excellent review of the Freeman-on-the-Land movement and how it tries to disrupt court operations and frustrate the legal rights of governments, corporations and individuals.

These Freeman legal matters are also occurring in BC. BC Supreme Court Justice Dev Dley recently had to deal with one Darwin Sorenson, who would not identify himself and spoke of Freeman principles in court.

"I am a declared sovereign" and "My name is Darwin" was stated in court, according to Cam Fortems of the *Kamloops Daily News* on November 26, 2012. Darwin refused to step into the area of the court where litigants typically speak to the court, saying, "If I enter this area of the courtroom, do I have a contract with the court?" When Justice Dley warned Darwin that he would have him removed from the court, Darwin responded that this would cost the Justice a \$30,000 fine.

In another case also before Justice Dley, another Freeman, Brian Alexander, had his appeal dismissed of a justice of the peace's decision finding him guilty of failing to produce a valid driver's licence. His appeal stated that the court had no jurisdiction.

#### HOW DO LAWYERS AND NOTARIES FIT INTO ALL THIS?

Freemen have attended law firm and notary offices, seeking to have their documents "notarized." The documents have strange wordings, stamps, blood and finger seals, UCC and biblical references and

the like. They are usually pseudo-legal and completely unlike any legal document that a lawyer or notary would draw or witness.

In one case in BC, a notary witnessed a series of documents with names such as a "Notice of Non Response," a "Notarial Certificate of Dishonour" and a "Notarial Instrument of Protest," which led to the creation of a "True Bill and Notice of Accounting" for the sum of \$3.5 billion dollars. These were all stated to be against the BC Court of Appeal. In this case, the notary apparently witnessed the documents in her capacity as "Notary Acceptor." She was disciplined by the Society of Notaries Public for breach of Rule 11.01 of the Notary Rules, and admitted that her conduct was contrary to the best interests of the public and the notarial profession.

Lest one believe that only notaries have witnessed and notarized these documents, there have been instances when BC lawyers too have been approached about acting in this capacity.

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*While the Freeman movement represents a small but potentially growing threat, there remains the possibility that a law office could face this or other type of security threat.*

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#### SAFETY

Since one of the tenets of the Freeman-on-the-Land movement is an unrestricted right to possess and use firearms, they raise significant safety and security concerns. They have been known to become angry when lawyers or notaries have refused to notarize their documents or when stopped by police officers.

The CBC did an excellent feature on the Freeman-on-the-Land movement that mentions an affidavit of truth: [www.cbc.ca/news/canada/story/2012/02/29/freeman-movement-canada.html](http://www.cbc.ca/news/canada/story/2012/02/29/freeman-movement-canada.html). It includes video of a Freeman acting up in court.

YouTube has a video showing a routine traffic stop of a "sovereign citizen" that ended in the death of the two peace officers involved: [www.youtube.com/watch?v=3sDAYGod5PM](http://www.youtube.com/watch?v=3sDAYGod5PM).

S. de Léséleuc in *Criminal Victimization in the Workplace* (Canadian Centre for Justice Statistics, Statistics Canada,

2004 [www.statcan.gc.ca/pub/85f0033m/85f0033m2007013-eng.pdf](http://www.statcan.gc.ca/pub/85f0033m/85f0033m2007013-eng.pdf)) stated that 17 per cent of all self-reported violent crimes occurred at the victim's place of work. That is over 356,000 incidents of violence in Canadian workplaces in a single year.

While the Freeman movement represents a small but potentially growing threat, there remains the possibility that a law office could face this or other type of security threat. Accordingly, there are two steps that law offices should consider and implement for the safety of their workers.

The first is to have a workplace security plan in place to deal with external threats to those in the office. This plan should include dealing with an angry and possibly armed individual entering the office. It should also extend to dealing with potential bomb threats, suspicious packages being delivered to the office, etc. Everyone in the office should be familiar with the plan and, like a fire drill, it should receive an occasional trial run to ensure that everyone understands their role and what is, and is not, to be done in the circumstances.

Examples of such security plans can be found at:

- University of Washington ([www.washington.edu/admin/police/prevention/Workplace\\_Security\\_Plan\\_current.pdf](http://www.washington.edu/admin/police/prevention/Workplace_Security_Plan_current.pdf))
- Michigan Workplace Security Resource Guide ([www.michigan.gov/documents/CIS\\_WSH\\_security\\_73971\\_7.htm](http://www.michigan.gov/documents/CIS_WSH_security_73971_7.htm))

The second is to recognize when a Freeman or sovereign citizen is attending the office and asking to have documents executed, witnessed and/or notarized and to take appropriate action in the circumstances.

Lawyers should determine when they are being asked to notarize documents that they do not recognize and that appear to have no legal purpose. Lawyers should not be acting in a way that gives a patina of credibility to a pseudo-legal litigant. Above all, "A lawyer owes a duty to the state, to maintain its integrity and its law." (Chapter 1, Rule 1(1) Canons of Legal Ethics – *Professional Conduct Handbook*).

Being prepared to deal with the Freeman-on-the-Land is simply prudent business planning. After all, notarizing a document isn't something to die for. ♦

PRACTICE WATCH, by Barbara Buchanan, Practice Advisor

## Fees, disbursements and interest; Practice Checklists Manual; identity fraud; forest land



### BC CODE SECTION 3.6 – FEES, DISBURSEMENTS AND INTEREST

A lawyer must not charge or accept a fee or disbursement, including interest, unless it is fair and reasonable and has been disclosed in a timely fashion: *BC Code* rule 3.6-1.

I recommend that lawyers provide a client with a written retainer agreement, before taking the case or very early in the relationship. Rule 3.6-1 (see commentary) requires a lawyer to “provide to the client in writing, before or within a reasonable time after commencing a representation, as much information regarding fees and disbursements, and interest, as is reasonable and practical in the circumstances, including the basis on which fees will be determined.” Also, if a lawyer and client agree that the lawyer will act only if a retainer is paid in advance, the lawyer must confirm the agreement in writing with the client and specify a payment date (rule 3.6-9).

#### What is a fair and reasonable fee?

As set out in the commentary to rule 3.6-1, that depends on several factors,

such as:

- the time and effort required and spent;
- the matter’s difficulty and its importance to the client;
- the results obtained;
- whether a special skill or service was required and provided;
- fees authorized by statute or regulation;
- special circumstances, such as the postponement of payment, uncertainty of reward, or urgency;
- the likelihood, if made known to the client, that acceptance of the retainer will result in the lawyer’s inability to accept other employment;
- any relevant agreement between the lawyer and the client;
- the lawyer’s experience and ability;
- any estimate or range of fees given by the lawyer; and
- the client’s prior consent to the fee.

A lawyer must be ready to explain the basis of the fee and disbursement charges to the client, with full disclosure. As a lawyer

and client have a fiduciary relationship, there must be no hidden fees. Rule 3.6-3 requires that the amounts charged as fees and disbursements must be clearly and separately detailed in the statement of account to the client. If there is a joint retainer, the fees and disbursements must be divided equitably, unless the clients agree otherwise (rule 3.6-4).

#### What may be charged as disbursements and “other charges”?

A lawyer may charge as disbursements “only those amounts that have been paid or are required to be paid to a third party by the lawyer on a client’s behalf” (e.g. long distance phone charges, postage, out of office photocopying and printing, courier charges, government filing fees). If the client has agreed in writing to such costs as paralegal, word processing, computer charges, in-house photocopying and fax charges that are not disbursements, the statement of account may include a subcategory entitled “Other Charges” under the fees heading. (See rule 3.6-3 commentary).

#### What if something unforeseen happens that may substantially affect the amount of a fee or disbursement?

A lawyer should immediately explain to a client about any fees or disbursements that the client might not reasonably have been expected to anticipate. This and all fee discussions should be confirmed in writing, and the client should be kept up to date as the matter progresses, including about any revision of the initial estimate of fees and disbursements. (See rule 3.6-1 commentary).

#### Can a lawyer charge interest on an overdue account?

A lawyer may only charge interest if it is fair and reasonable and it is disclosed in a timely fashion. The lawyer should set out the rate and how interest will be calculated in the retainer agreement.

See *BC Code* section 3.6 in its entirety

for other important information regarding fees, including contingent fee agreements and referral fees, and appropriation of client's funds, as well as the existing provisions in the *Legal Profession Act* and the Law Society Rules.

### CHECKLISTS MANUAL – NEW UPDATES

Check out recent updates to the Law Society's free *Practice Checklists Manual* (go to Practice Support and Resources on the Law Society website). Twenty-eight out of the 41 checklists in the manual have recently been updated:

- Client Identification and Verification Procedure
- Criminal – Criminal Procedure, Judicial Interim Release Procedure, Sentencing Procedure, Impaired/Over 80 Trial Examination of Witnesses
- Family – Family Practice Interview, Family Law Agreement Procedure, Separation Agreement Drafting, Marriage Agreement Drafting, Family Law Proceeding, and Child, Family and Community Service Act Procedure
- Human Rights Complaint Procedure
- Immigration – Protection Claim, Appeal Against Deportation
- Will and Estates – Wills Procedure, Testator Interview, Will Drafting, Probate and Administration Interview, Probate and Administration Procedure
- Real Estate – Residential Conveyance Procedure, Mortgage Procedure, Mortgage Drafting
- Litigation – Foreclosure Procedure, General Litigation Procedure, Personal Injury Plaintiff's Interview or Examination for Discovery, Collections Procedure, Collections – Examination in Aid of Execution, Builders Lien Procedure

Watch for updates to the 13 corporate and commercial checklists, expected to be published shortly.

If you have suggestions for improving the manual's content, send them to Barbara Buchanan at [bbuchanan@lsbc.org](mailto:bbuchanan@lsbc.org). The manual has been developed by the Law Society with the assistance of the Continuing Legal Education Society of BC.

### IDENTITY FRAUD – ALBERTA LOAN ON ALBERTA LAND

A recent real estate mortgage identity

fraud in Alberta had a BC component, and we bring it to your attention in case it comes your way. Three lawyers were involved, two legitimate Alberta lawyers and one fake BC lawyer. Below is generally what happened:

- Fraudsters pretending to be the principals of a company posed as the true owners of a piece of Alberta commercial real estate. The players, a "husband and wife" and their "son," were represented by an Alberta lawyer.
- The fraudsters made arrangements for a \$3 million commercial loan from a legitimate mortgage company operating in western Canada. The lender was represented by Alberta counsel.
- The lender required a \$20,000 good faith deposit from the borrower (the fraudsters' fake company) to conduct due diligence.
- The fraudsters provided the \$20,000 to the lender and also provided a fake company minute book and personal guarantees.
- The son met with the Alberta lawyer, and claimed that his mother and father were in BC.
- The parents' identity was to be verified in BC by a person the fraudsters claimed was a BC lawyer; however, it so happened that there was a legitimate BC lawyer with the same name.
- The fraudsters asked the Alberta lawyer to wire the loan funds to Mexico instead of BC where they lived (a sudden change in plans that raised suspicion).
- The Alberta lawyers did some cross-checking and discovered that the contact details for the fake BC lawyer did not match with the legitimate BC lawyer. The legitimate BC lawyer was unaware that his name was being used.
- The fraudsters lost their \$20,000 deposit. The legitimate law firms only lost their time.

What are some lessons to take away from this?

1. If a lawyer is not able to meet with a new client in person to verify their

## Services for lawyers

### Practice and ethics advisors

**Practice management advice** – Contact **David J. (Dave) Bilinsky** to discuss practice management issues, with an emphasis on technology, strategic planning, finance, productivity and career satisfaction.  
email: [daveb@lsbc.org](mailto:daveb@lsbc.org) tel: 604.605.5331 or 1.800.903.5300.

**Practice and ethics advice** – Contact **Barbara Buchanan, Lenore Rowntree or Warren Wilson, QC** to discuss ethical issues, interpretation of the *Professional Conduct Handbook* or matters for referral to the Ethics Committee.

Call Barbara about client identification and verification, scams, client relationships and lawyer/lawyer relationships.  
Contact Barbara at: tel: 604.697.5816 or 1.800.903.5300 email: [bbuchanan@lsbc.org](mailto:bbuchanan@lsbc.org).  
Contact Lenore at: tel: 604.697.5811 or 1.800.903.5300 email: [lrowntree@lsbc.org](mailto:lrowntree@lsbc.org).  
Contact Warren at: tel: 604.697.5857 or 1.800.903.5300 email: [wwilson@lsbc.org](mailto:wwilson@lsbc.org).

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



**PPC Canada EAP Services** – 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: 604.431.8200 or 1.800.663.9099.



**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, articling applicants and staff in law firms or other legal workplaces. Contact Equity Ombudsperson, **Anne Bhanu Chopra**: tel: 604.687.2344 email: [achopra1@novuscom.net](mailto:achopra1@novuscom.net).

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## New Limitation Act in force June 1, 2013

ON JUNE 1, 2013, the new *Limitation Act*, SBC 2012, c. 13 (formerly Bill 34) comes into force. The new Act simplifies the time limits for filing civil lawsuits. It replaces the current two, six and 10-year limitation periods for civil claims with a two-year-from-discovery basic limitation period and the current 30-year ultimate limitation period with a 15-year-from-occurrence limitation period (with some exceptions).

The new Act's limitation periods will apply to claims arising from acts or omissions that occur and are discovered on or after June 1, 2013. Under the new Act, most claims are discovered when a claimant

knew or ought to have known that the injury, loss or damage was caused by the defendant, and that a court proceeding would be an appropriate remedy (although discovery is postponed for some claims).

Lawyers can continue to rely on the current Act's provisions to advise clients on existing matters, as the new Act provides that the current Act's limitation periods continue to govern if the act or omission occurs *and* is discovered before June 1, 2013. The new Act also contains transition rules that will govern pre-existing claims arising from acts or omissions that occur before the effective date but are

discovered on or after June 1, 2013.

Understanding the new law and its effects, including the transition provisions, requires a comprehensive review of the new Act and its terms. Lawyers will want to familiarize themselves with the new legislation before it comes into effect so they can properly advise clients about future claims. The Canadian Bar Association, BC Branch has a webcast available and Continuing Legal Education will be offering training and resources. Details of the new Act, including transition information, can be found at [www.ag.gov.bc.ca/legislation/limitation-act/2012.htm](http://www.ag.gov.bc.ca/legislation/limitation-act/2012.htm). ❖

### WELLNESS AND LAP

## Making it through the tough times

### *Lawyers encouraged to take advantage of confidential support programs when needed*

THE LEGAL PROFESSION is, for most, an extremely rewarding career. However, at the same time, it can be very demanding. And, occasionally, the pressures of life, career and other factors can become overwhelming.

All BC lawyers have access to confidential support services. Though these services are financially supported by the profession through the Law Society, they are entirely and strictly confidential. Absolutely no personal or identifying information is shared with the Law Society.

#### LAWYERS ASSISTANCE PROGRAM – FUNDED FOR AND BY LAWYERS

The Lawyers Assistance Program (LAP) provides confidential support, counselling, referrals and peer interventions for lawyers, their families, support staff and articulated students who need help to deal with alcohol or chemical dependencies, stress, depression or other personal problems.

Based on the concept of “lawyers helping lawyers,” LAP relies on a network of volunteers from the BC legal community. The program also provides outreach, support and education services including many workshops, seminars and support group meetings.

For more information, see the program's website at [www.lapbc.com](http://www.lapbc.com) or call 1.888.685.2171 or 604.685.2171. Help is available 24/7.

#### EMPLOYEE AND FAMILY ASSISTANCE PROGRAM – COUNSELLING AND REFERRAL SERVICES

The Law Society funds personal counselling and referral services through PPC Canada

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*The Law Society remains committed to advancing lawyer wellness and the need to ensure programs are available to assist lawyers with regulatory and workplace changes has been identified in the strategic plan.*

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(Personal Performance Consultants), an organization that has been serving Canada since 1977.

Through a network of counsellors across the country, PPC can help with personal, relationship and family problems, stress management, substance abuse or work-related concerns.

Services are confidential and available at no cost to individual BC lawyers and

articled students, as well as their immediate families.

For more information, contact PPC Canada at [www.ca.ppcworldwide.com](http://www.ca.ppcworldwide.com) or 1.800.663.9099.

#### WELLNESS WORKING GROUP EXPLORES ADDITIONAL OPTIONS

The Law Society remains committed to advancing lawyer wellness and the need to ensure programs are available to assist lawyers with regulatory and workplace changes has been identified in the strategic plan.

To that end, the Practice Standards Committee has established a working group mandated to gather information on current wellness programs, to identify and eliminate barriers to lawyers using wellness programs, and to report back to the Practice Standards Committee with recommendations for the future.

The working group is chaired by Bencher Catherine Sas, QC, who is joined by Bencher Bill Maclagan, Appointed Bencher Peter Lloyd and Paula Cayley, former president of the employee assistance agency Interlock Corporation and a member of the Law Society's public hearing panel pool. ❖

## Conduct reviews

THE PUBLICATION OF conduct review summaries is intended to assist lawyers by providing information about ethical and conduct standards.

A conduct review is a confidential meeting between a lawyer against whom a complaint has been made and a conduct review subcommittee, which may also be attended by the complainant at the discretion of the subcommittee. The Discipline Committee may order a conduct review pursuant to Rule 4-4, rather than issue a citation to hold a hearing regarding the lawyer's conduct, if it considers that a conduct review is a more effective disposition and is in the public interest. The committee takes into account a number of factors, including:

- the lawyer's professional conduct record;
- the need for specific or general deterrence;
- the lawyer's acknowledgement of misconduct and any steps taken to remedy any loss or damage caused by his or her conduct; and
- the likelihood that a conduct review will provide an effective rehabilitation or remedial result.

### BREACH OF UNDERTAKING

A lawyer breached an undertaking given in a real estate matter by releasing holdback funds. The lawyer failed to personally review the file and instead relied on her paralegal assistant, who misunderstood the terms of the undertaking and had not been involved in the file when the undertaking was given. The lawyer has reorganized her practice and has allocated a portion of each work week to the administration of her practice. (CR#2012-61)

A lawyer breached an undertaking given in a real property transaction and a related litigation matter and did not take immediate steps to rectify the breach when he became aware that he could no longer comply with the undertaking. His client gave him contrary instructions post closing, and the lawyer mistakenly believed that his client's instructions were paramount to the undertaking. A conduct review subcommittee discussed the *Professional Conduct Handbook* requirement that a lawyer fulfill all undertakings. The subcommittee discussed the large array of resources available to help resolve ethical issues, including the Benchers and Law Society practice and ethics advisors who can provide immediate and helpful assistance. The lawyer stated that, in the future, he would get his client's written instructions concerning money that is the subject of an undertaking and his client's written approval of any payments to be withheld from the client. (CR#2012-65)

### BREACH OF TRUST ACCOUNTING RULES

A lawyer withdrew trust funds prior to delivering a bill, failed to report trust shortages, failed to perform monthly trust reconciliations in a timely way, failed to record cash receipts in cash receipt book and failed to maintain proper records. The errors were numerous but not substantively serious. The lawyer cooperated with the Law Society and had improved his accounting practices by the time of the follow-up audit. A conduct review subcommittee recommended that he develop a succession plan, review the *Trust Accounting Handbook* with his bookkeeper and hire an accountant to do informal audits on an annual basis to check for general compliance. (CR #2012-48)

A lawyer failed to keep proper trust account records, signed blank trust cheques, did not record trust transactions within seven days, made payments from trust when records were not current and did not maintain trust and general account records on site. The lawyer's conduct in failing to comply with a court order requiring him to hold funds in trust pending agreement between the parties was also addressed. On a post-audit review, the lawyer had made progress in dealing with some of the accounting issues. Should the lawyer be subject to further disciplinary action, the conduct review subcommittee wanted to record its view that the lawyer failed to take personal responsibility for the issues and did not appear to appreciate the seriousness of his breaches of the accounting rules or the court order. (CR #2012-50)

A lawyer withdrew trust funds that were impressed with a specific purpose contrary to Rule 3-57(7). The court had ordered the funds to be used to pay down a joint family debt. Opposing counsel agreed to the funds being paid to the lawyer on the understanding that the funds were to be used as ordered. Instead, the lawyer used some of the funds to pay his legal fees and paid out the balance to his client. A conduct review subcommittee advised the lawyer that his conduct was inappropriate in that he had acted contrary to his obligation as an officer of the court to ensure the terms of an order were fulfilled and contrary to his agreement with opposing counsel. The subcommittee also pointed out that opposing counsel's client was harmed by his conduct and that the lawyer's conduct reflected poorly on the legal profession. (CR #2012-55)

A lawyer billed a client for disbursements that had not been billed or paid by the lawyer, failed to properly record cash payments and disbursements and had an aggressive communication style with a client. The lawyer had medical and financial issues that affected her ability to conduct a trial. The lawyer agreed not to take on work that is beyond her capacity. The lawyer currently has a practice supervisor. (CR #2012-57)

A lawyer acted as executor of a simple estate, but had not fully administered the estate after five years. He failed to maintain proper records for the accounting of the estate and inaccurately represented on his trust reports that he had maintained them in accordance with Part 3, Division 7 of the Law Society Rules. He rendered bills with no description of the work, and took funds prior to delivering a bill and without first obtaining the beneficiary's approval. The lawyer also failed to keep the client informed of the status of the matter and failed to provide an accounting of the estate to the beneficiary. (CR #2012-59)

### BREACH OF NO-CASH RULE

A client deposited \$10,000 in cash into a lawyer's bank account at a bank branch in another province to cover a residential conveyance. The lawyer mistakenly believed that Rule 3-51.1(3.3) only applied when he or his staff actually received cash in his office. The lawyer also failed to record the funds in a cash receipt book contrary to Rule 3-61.1(1) and failed to correctly report the transaction on the firm's trust report contrary to Rule 3-72(5). A conduct review subcommittee emphasized the importance of self regulation in this area. It suggested that, unless the

*continued on page 20*

*Conduct reviews ... from page 19*

profession can illustrate its ability to regulate itself in respect of receipt of cash, the government may impose its own regulation and thereby limit the capacity of lawyers to act independently in their clients' interests. (CR #2012-63)

## FAILURE TO REMIT GST AND PST

A lawyer failed to remit GST and PST and provided inaccurate responses on his trust reports. The lawyer has now hired a full-time financial manager. A conduct review subcommittee recommended that he hire competent accountants and tax professionals and that he contact the Law Society practice advisors if he encounters technical accounting issues in the future. (CR #2012-45)

## TAKING DEFAULT WITHOUT REASONABLE NOTICE

A lawyer obtained default judgment without giving adequate notice to opposing counsel as required by [Chapter 11, Rule 12](#) and [Chapter 1, Rule 4](#) of the *Professional Conduct Handbook*. He also paid out trust funds when he knew the other party would likely apply to set aside the default judgment. The lawyer was subject to an imposed undertaking not to take steps to note defendant in default without adequate notice. The lawyer stated he would be more prudent in the future to review and comply with undertakings, would not bow to client pressure and would ensure that he made the appropriate course of action clear to his clients. (CR #2012-44)

## RUDENESS AND INCIVILITY

A lawyer contacted a represented opposing party on two occasions and engaged in unprofessional and discourteous communications with other lawyers. The lawyer was a former lawyer at the time of the review. A conduct review subcommittee reminded him that lawyers must remain civil, courteous and objective, even in the face of frustration and dissatisfaction. (CR #2012-49)

A lawyer engaged in unprofessional and discourteous communications with opposing counsel while acting in a difficult matrimonial matter. The tone of his correspondence ranged from somewhat abrasive to implicitly threatening and was not in accordance with guidelines 1 and 3 of the [Best Practice Guidelines for Lawyers Practising Family Law](#). A conduct review subcommittee reminded the lawyer of the importance of remaining objective and of his professional obligation to do so even while vigorously representing interests of his client. (CR #2012-60)

## FAILURE TO RESPOND TO ANOTHER LAWYER

A lawyer delayed in responding to communication from another lawyer contrary to [Chapter 11, Rule 6](#) of the *Professional Conduct Handbook* and left an executed Form A transfer of property with his clients when he knew that the property was under foreclosure, that the financial institution had conduct of sale of the property and that his clients did not have sufficient funds in place to pay out the mortgage. The transfer was filed by the clients and had to be set aside as a fraudulent conveyance/preference. The lawyer acknowledged that the transfer should have remained in his possession. (CR #2012-58)

## FAILURE TO REPORT CRIMINAL CHARGE

A lawyer failed to report an impaired driving charge to the Law Society,

failed to disclose an undertaking given as part of a negotiated disposition of the criminal charge and made inaccurate statements in an affidavit about the Law Society investigation. Lawyers are reminded of their obligation to report a criminal charge under [Rule 3-90\(1\)](#) and of the importance of precision and accuracy in the wording of affidavits. (CR #2012-46)

## CONDUCT UNBECOMING

A lawyer was publicly intoxicated and charged with obstruction of justice and assault of a driver, after a motor vehicle accident in which he was a passenger in another car. This conduct was contrary to [Chapter 2, Rule 1](#) of the *Professional Conduct Handbook*. Although he reported the criminal charges, he withheld information and delayed responding to the Law Society. The lawyer has undergone counselling and is more aware of the role of a lawyer in the community. (CR #2012-64)

## CONFLICT OF INTEREST

A lawyer commenced a relationship with a client's common law partner. The lawyer failed to provide undivided loyalty to her client, failed to disclose all relevant information to her client and engaged in conduct that would adversely affect the integrity of the legal profession. The lawyer withdrew as counsel shortly after the relationship began. The lawyer apologized to the client and acknowledged her misconduct. (CR #2012-51)

A lawyer personally invested, and solicited investment from other people, in a client who was eventually found to be involved in a US Ponzi scheme. Lawyers should avoid mixing an investment sales role with their professional status as a lawyer. Lawyers should also refrain from engaging in conduct, whether in private life, extra-professional activities or professional practice, that casts doubt on the lawyer's professional integrity or reflects adversely on the integrity of the legal profession. A conduct review subcommittee noted that lawyers are trusted by the public. By soliciting investment, the lawyer attached his credibility to the investment scheme. The subcommittee recommended the lawyer refrain from making investment opportunities available to others when he has not independently investigated the veracity of the facts upon which the investment was based. The lawyer acknowledged his misconduct and advised that he would be more vigilant with respect to his intake of potential clients in the future. (CR #2012-56)

A lawyer drafted a share purchase agreement on behalf of both a vendor and the purchaser without ensuring each party obtained independent legal advice, contrary to [Chapter 6](#) of the *Professional Conduct Handbook* and the minutes of the Ethics Committee dated July 4 and December 11, 2008. (CR #2012-62)

## DUTY TO COURT

A lawyer made certain representations as to the principal driver and mechanical condition of a personal motor vehicle during a small claims court trial. The court found that the lawyer had wilfully made false representations. [Chapter 1, Rule 2](#) of the *Professional Conduct Handbook* states that a lawyer must not attempt to deceive the court by offering false evidence or by misstating facts or law. A conduct review subcommittee accepted the lawyer's acknowledgment of poor judgment in an isolated, personal matter. (CR #2012-47)

## DUTY TO COURT AND OTHER LAWYERS

A lawyer swore an affidavit that materially misstated the terms of two court orders. In doing so, he cast aspersions on the integrity of opposing counsel without justification. The lawyer also pressed an application to dismiss based on non-compliance with court orders, even after he knew his characterization of the court orders was mistaken. The lawyer did not intend to mislead the court, and it was not, in fact, misled. A conduct review subcommittee reminded the lawyer of his obligation not to misstate facts before the court or knowingly assert facts for which there is no reasonable basis. The subcommittee also stressed the importance of finding a balance between vigorously pressing a client's case and acting with courtesy, civility and good faith towards another lawyer. (CR #2012-53)

## DUTY TO STATE

A lawyer obtained a publication ban on evidence and then subsequently spoke with reporters about matters covered by the ban. By speaking with reporters, he may have encouraged the publication of information by the media notwithstanding the ban, contrary to Chapter 1, Rule 1(1) of the *Professional Conduct Handbook*. (CR #2012-66)

A realtor, related to purchasers of real property, forwarded deposit money to a lawyer after the purchase transaction had collapsed. The realtor failed to impose any explicit trust conditions on the money but did forward the funds care of the purchase file. The funds were deposited in the lawyer's trust account to the credit of the purchase file. Prior correspondence made it arguable that the funds were received as a "stakeholder." The vendor claimed the deposit monies. The lawyer used the deposit funds to pay his fees then paid the balance to the purchasers. The lawyer facilitated the breach of the realtor's obligations under the contract of purchase and sale and the *Real Estate Services Act*, contrary to Chapter 1, Rule 1 of the *Professional Conduct Handbook*. (CR# 2012-68)

## ELECTRONIC FILING AND DUTY OF OTHER LAWYERS

A lawyer signed his name over the names of US patent agents employed by his firm without their permission and used a patent agent's digital signature without permission when he had been expressly directed not to do so. The lawyer also failed to ensure that his practice met US patent law requirements. The lawyer candidly recognized the gravity of his mistakes. (CR #2012-52)

## ELECTRONIC FILING

A lawyer allowed his electronic signature to be affixed by his real estate paralegal, contrary to sections 168.3 and 168.9 of the *Land Title Act*, the Land Title and Survey Authority of BC requirements and his agreement with Juricert. The conduct brought into question the lawyer's competence and reflected adversely on the integrity of the legal profession under Chapter 2, Rule 1 of the *Professional Conduct Handbook*. A conduct review subcommittee noted that the requirement was designed to prevent fraud and to uphold the integrity of the land title system in BC. The subcommittee cautioned that a possible consequence of the misuse of electronic signatures is that Juricert could revoke the authority to digitally sign documents. The lawyer has now obtained a new signature and has corrected his practice. (CR# 2012-67)

## FAILURE TO SUPERVISE EMPLOYEES

A lawyer failed to supervise her employee who was acting unprofessionally toward a client. A conduct review subcommittee advised the lawyer that she had a duty to supervise her staff and ensure that they act professionally and in a manner that does not tarnish the reputation of the legal profession. The lawyer has now implemented a policy that any client complaint is dealt with directly by her and that staff is to avoid substantive conversations or any personal discussions with clients. (CR #2012-54) ❖

### Practice Watch ... from page 17

identity, the lawyer should choose the individual who will do it. Don't let a potential fraudster choose the guarantor, commissioner or agent.

2. If a fraudster thinks that the potential return is high enough, he or she may gamble putting up their own money as a deposit or retainer, in this case a \$20,000 deposit.
3. Fraudsters are creating increasingly sophisticated documents to make a fraud seem real, in this case a company minute book.
4. Lawyer should be alert to any sudden

change in plans to send funds to a different person or location.

For more information about scams against lawyers, see Fraud Alerts on the Law Society website or contact Barbara Buchanan at [buchananb@lsbc.org](mailto:buchananb@lsbc.org).

### WARNING TO LAWYERS ACTING FOR PURCHASERS FOR PRIVATE MANAGED FOREST LAND – TAX ISSUE

BC Assessment has informed the Law Society that two aspects of tax law have caused concern for some purchasers of private managed forest land.

Take note that purchasers of private managed forest land may be responsible for:

- paying taxes on timber harvested by the vendor; and
- paying exit fees if the property is removed from managed forest class.

Detailed information regarding managed forest land and these tax issues is available in the notice at [www.lawsociety.bc.ca/docs/bulletin/bb\\_2012-04-winter\\_forest-land.pdf](http://www.lawsociety.bc.ca/docs/bulletin/bb_2012-04-winter_forest-land.pdf) or directly from BC Assessment.

### FURTHER INFORMATION

Contact Practice Advisor Barbara Buchanan at 604.697.5816 or [bbuchanan@lsbc.org](mailto:bbuchanan@lsbc.org) for confidential advice or more information regarding any items in Practice Watch. ❖

## Discipline digest

BELOW ARE SUMMARIES with respect to:

- Laird Russell Cruickshank
- Aaron Murray Lessing

For the full text of discipline decisions, visit the Hearings reports section of the Law Society website.

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### LAIRD RUSSELL CRUICKSHANK

Vancouver, BC

Called to the bar: May 10, 1983

Discipline hearing: April 19, 2012

Panel: *Majority decision*: Tony Wilson, Chair, and Adam Eneas; *Minority decision*: Carol Hickman, QC

Oral Reasons: April 30, 2012

Report issued: August 22, 2012 (2012 LSBC 27)

Counsel: Alison Kirby for the Law Society and Gerald Cuttler for Laird Russell Cruickshank

#### FACTS

Between 2005 and 2008, Laird Russell Cruickshank failed to comply with various accounting rules in multiple instances, breached two undertakings in separate civil litigation matters, failed to enter into written contingent fee agreements with five clients, and failed to remit PST and GST in a timely way. His failures to comply with Law Society rules were uncovered during a compliance audit and a subsequent investigation of his practice.

Cruickshank's annual trust report for the period ending April 30, 2010 revealed his continued failure to remit PST and GST in a timely way, failure to remit employee source deductions, and failure to comply with various accounting rules in several instances in 2009 and 2010.

At the hearing, Cruickshank's lawyer submitted that Cruickshank was a poor administrator of the business side of his practice and was taking steps to remedy that. In May 2011, he hired a bookkeeper experienced in law firm accounting practices.

#### ADMISSION AND DISCIPLINARY ACTION

Cruickshank admitted to a breach of the Law Society accounting rules and also admitted to professional misconduct. Pursuant to Rule 4-22 and subject to the ruling of the panel, both Cruickshank and the Law Society's Discipline Committee agreed to a proposed disciplinary action of a one-month suspension and \$8,500 in costs. The panel could either accept or reject the proposed disciplinary action but could not modify it.

The panel noted that Cruickshank had a prior discipline history with the Law Society, which included a previous conduct review for breach of undertaking.

#### *Majority (Wilson, Eneas)*

In the majority's view, Cruickshank was profoundly sloppy in his bookkeeping, accounting and law firm management practices. Although the misconduct amounted to numerous breaches over a period of five years, the misconduct was largely caused by Cruickshank paying little or no

attention to the administrative side of his practice. There was no evidence of any harm to clients, and he did not gain any financial advantage from his conduct.

The majority acknowledged that Cruickshank's infractions between 2005 and 2010 were due, in part, to the fact that he relied on office managers who were unfamiliar with Law Society trust accounting practices and procedures. However, the majority also recognized that this was not an excuse, as lawyers must ensure their professional staff is qualified and capable of performing the duties and responsibilities expected of members of the Law Society.

In addition to admitting to the rules breach and the incidents of professional misconduct, the majority found that Cruickshank had taken steps to alleviate management and accounting deficiencies in the future. In February 2011, Cruickshank completed the Law Society's trust accounting course. He hired an experienced bookkeeper who is familiar with trust accounting for lawyers.

The majority accepted Cruickshank's admission and the proposed disciplinary action and ordered that he:

1. be suspended from the practice of law for one month; and
2. pay \$8,500 in costs.

#### *Minority (Hickman)*

The minority did not accept the majority's characterization of Cruickshank's behaviour as simply "profoundly sloppy," since the incidents of misconduct occurred over a period of five years and on a repeated basis. As an example, Cruickshank's failure to prepare monthly trust reconciliations occurred 18 times between 2005 and 2008.

The minority found it even more disturbing that Cruickshank's behaviour continued throughout 2009 and 2010, despite being made aware of the mistakes he was making by 2008 as part of the compliance audit report process. Further, he did not hire a qualified bookkeeper to address his accounting problems until May 2011.

Given the severity and duration of the breaches and misconduct, the minority did not accept that a one-month suspension was "fair and reasonable" or in the public interest. The minority stated that the public must be confident that lawyers will do everything possible to maintain their trust accounts and fulfill their undertakings.

The minority believed that the suspension should be significantly longer than the one month proposed and, accordingly, rejected the Rule 4-22 conditional admission.

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### AARON MURRAY LESSING

Surrey, BC

Called to the bar: May 17, 1991

Discipline hearings: March 29, July 30 and 31, 2012

Panel: David Renwick, QC, Chair, Graeme Roberts and Donald Silver-sides, QC

Reports issued: May 28 (2012 LSBC 19) and October 1, 2012 (2012

LSBC 29)

Counsel: Alison Kirby for the Law Society and Henry Wood, QC for Aaron Murray Lessing

## FACTS

### Failing to notify the Law Society of monetary judgments

Between 2002 and 2011, eight monetary judgments were made against Aaron Murray Lessing.

One of the judgments required him to make monthly instalments to the co-owner of his condominium. When Lessing did not make any payments after the first instalment, the co-owner filed a complaint with the Law Society.

During the Law Society's investigation, it was discovered that five other judgments had also remained unsatisfied for more than seven days and that Lessing had not notified the Society of the existence of these judgments.

In August 2009, the Law Society wrote to Lessing informing him of his obligations to notify the executive director, pursuant to Rule 3-44. Lessing responded that he was not aware of the rule and that he would comply in future.

Two more judgments were made against Lessing in December 2010 and February 2011. In February and March 2011, counsel for the client involved in litigation with Lessing advised the Law Society of the two judgments and that the amounts that Lessing had been ordered to pay remained unpaid.

The Law Society wrote to Lessing asking whether a judgment had been satisfied and, if not, whether he had notified the executive director. Lessing replied that he did not report these orders because they were made in his absence and he intended to apply to set both orders aside, including the order for costs.

Lessing satisfied these two judgments in July 2011.

Lessing did not satisfy any of the eight monetary judgments within seven days after the date of their entry. He failed to notify the Law Society in writing of the circumstances of the judgments against him and to provide a written proposal for satisfying the judgments, as required by Law Society rules.

### Failing to comply with three court orders

Lessing represented himself in matrimonial proceedings in the Supreme Court of BC that involved claims for spousal support, child support and a division of assets.

During the proceedings, Lessing received an order to provide opposing counsel with incorporation documents by August 29, 2008. Lessing did not provide the incorporation documents, despite receiving several letters from opposing counsel.

On April 14, 2009, there was a second order that Lessing provide a list of documents and information to opposing counsel before May 7, 2009.

A third order was made when Lessing did not provide the list of documents or any of the documents specified in the second order.

On June 4, 2009, at a court hearing that was not attended by Lessing or his counsel, Lessing was found in contempt of court for failing to comply with the three orders. A fourth order was made at this time.

On June 9, 2009, Lessing produced the incorporation documents required in the first order. He subsequently produced the documents that had been ordered to provide in the second and third orders.

Lessing consulted a psychologist for counselling in early 2012. The psychologist advised the panel that, in his diagnosis, Lessing went through a period of clinical depression and showed symptoms of post-traumatic stress disorder, likely triggered by his marital issue. The psychologist believed that the chances of Lessing repeating this type of avoidant behaviour or getting into a similar state of depression and traumatized paralysis was low.

## DETERMINATION

The panel determined that, by failing to notify the Law Society of first six monetary judgments, Lessing breached the Law Society rules and that, by failing to notify the Law Society of the last two judgments, he committed professional misconduct. In the panel's view, Lessing was aware of his obligations under Rule 3-44 when the last two of the unsatisfied monetary judgments were entered, so they warranted more severe disciplinary action.

The panel determined that Lessing committed conduct unbecoming a lawyer by failing to comply with three court orders. Failing to comply with court orders and being found in contempt of court by a judge is very serious conduct that undermines the rule of law; however, the panel considered mitigating circumstances:

1. The panel found that Lessing made a serious mistake in representing himself in the matrimonial litigation; simultaneously acting as litigant and his own counsel undoubtedly clouded his judgment.
2. The panel agreed that, except for the incorporation documents that should have been matters of public record, Lessing's delay in producing the documents required by the court orders was not substantial.
3. The court permitted Lessing to cure his contempt by producing within 14 days the documents required in the earlier orders, and he did so.
4. The panel accepted Lessing's testimony regarding his mental state and his inability to deal with the matrimonial proceedings in which he acted as his own counsel, and accepted the psychologist's conclusion that Lessing was suffering from clinical depression in 2008 and 2009.

The panel also considered Lessing's professional conduct record, which included four conduct reviews between 1999 and 2011. None of these conduct reviews involved serious actions, and the conduct was not similar to the conduct in this case.

## DISCIPLINARY ACTION

The panel ordered that Lessing pay:

1. \$2,000 fine (first citation);
2. \$12,000 fine (second citation); and
3. \$8,000 in costs

*The Discipline Committee has referred the decision on disciplinary action to the Benchers for review on the record, under section 47 of the Legal Profession Act.* ❖

## ELECTED BENCHERS

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845 Cambie Street, Vancouver, British Columbia, Canada V6B 4Z9

Telephone 604.669.2533 | Facsimile 604.669.5232

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