



BENCHERS' BULLETIN

Keeping BC lawyers informed

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The access to justice imperative

by Gavin Hume, QC

THIS PAST YEAR, the Law Society was very much in the forefront of activities aimed at enabling the public to secure legal services. This will remain a significant and ongoing priority for me and the Benchers this year.

We approved the recommendation of the Delivery of Legal Services Task Force to expand the roles that paralegals and articulated students can perform under the supervision of a lawyer.

We supported the work of the Public Commission on Legal Aid in British Columbia.

And we took to heart the call in late November from Chief Justice Lance Finch, echoed more recently by Chief Justice Beverley McLachlin, when he invited the Law Society, and the profession, to meet the challenge of access to justice head on and find creative solutions to the high cost of legal services to the public.

It is now time for those initiatives to yield real results.

Part of the Law Society's mandate is "to uphold and protect the public interest in the administration of justice by preserving and protecting the rights and freedoms of all persons." Fulfilling this part of our mandate will require the Law Society to assist lawyers to find ways to make their services more accessible to the public.

The challenges are daunting and certainly extend beyond the capacity of the Law Society alone, but the Benchers are aggressively doing all we can in this area. The Access to Legal Services Advisory Committee will meet far more frequently and tackle a number of initiatives. The committee will carry forward the Delivery of Legal Services Task Force recommendations, including working with the Law Society staff, the Provincial Court, the Supreme Court and others to determine and implement the changes to our *Professional Conduct Handbook* and Rules that will be necessary to allow law students and paralegals to take on expanded duties. Upon completion

of this important work, it will be up to the profession to take advantage of the new options for providing affordable legal services to the public.

Along with others in the legal community, we welcomed the report on legal aid from Commission Chair Len Doust, QC. As expected, the report provides fresh insight into the well-recognized challenges faced by our public legal aid system. We will be reviewing its recommendations carefully to determine its implications for the Law Society as we continue our work in this area.

There will be no quick fixes, to be sure. But I am confident we can make progress in the coming months.

As an indication of the fact that the issue of access to legal services extends far beyond our province, the Federation of Law

The challenges are daunting and certainly extend beyond the capacity of the Law Society alone, but the Benchers are aggressively doing all we can in this area.

Societies of Canada has recently launched its Access to Legal Services Committee. BC will be well represented on that committee by Benchers David Mossop, QC.

This year, I am also the BC member on the National Council, the governing body of the Federation of Law Societies of Canada.

As you are aware, through the auspices of the Federation, the law societies in Canada have entered into mobility agreements that facilitate the movement of the members of the various law societies from one law society to another with relative ease. This agreement has necessarily resulted in the Federation focusing on the development and implementation of high, consistent and transparent national standards for Canada's law societies in core areas of their mandates.

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 — please contact the editor at communications@lsbc.org. Additional subscriptions to Law Society newsletters may be ordered at a cost of \$50 (plus HST) per year by contacting the subscriptions assistant at communications@lsbc.org. To review current and archived issues of the *Bulletin* online, see "Publications and Resources" at lawsociety.bc.ca.

PHOTOGRAPHY

Photos submitted: pages 7, 10, 12 and 15

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I will report further on these initiatives and why I think they are very important in a future *Benchers' Bulletin*.

Lastly, this year marks the final year of the Law Society's first strategic plan.

In addition to ensuring we close out the year with the plan complete, we will be developing the 2012-14 plan to provide continuity and guidance to the Benchers and the Law Society in the years ahead.

One year as President is not a long time. There is much to do and I intend to do as much as I can. I look forward to working with you, hearing from you and continuing the fine work of this organization. ❖

Public survey

IN NOVEMBER 2010, the Law Society commissioned a survey of the public to assess current perceptions of lawyers and the Law Society. This survey has been conducted several times before, beginning in 1998. Its purpose is to provide the Law Society with an assessment over time of public perceptions so that any trends in public opinion can, if needed, be further explored.

The most recent results show a modest but positive trend in the public's perception of lawyers and the Law Society's ability to regulate the profession.

"The survey is a good barometer of

how the public perceives the profession, and it gives the Law Society some guidance on whether there is anything from a regulatory perspective we should or could be doing to address any public concerns," said Adam Whitcombe, Chief Information Officer.

Respondents were asked to rate lawyers on criteria such as expertise, trustworthiness, client service, efficiency, value for money and commitment to public service. They were also asked to rate the Society's ability to set standards, handle complaints and discipline lawyers.

"Despite the lawyer jokes, this survey suggests that many people are satisfied with the work that lawyers do," said Robyn Crisanti, Manager of Communications.

The independent telephone survey of 800 randomly selected members of the public from across the province was conducted in November 2010 by NRG Research Group. Results are considered accurate, plus or minus 3.5 per cent, 19 times out of 20.

For the complete results, see the News Release on the Law Society's website. ❖

HERE ARE SOME HIGHLIGHTS FROM THE SURVEY

<i>How confident are you in the Law Society's ability to ...</i>	Very confident	Somewhat confident	Not very confident	Not at all confident	Don't know
permit lawyers to practise law?	31%	52%	6%	3%	8%
set the standards for how lawyers practise law?	27%	48%	13%	5%	7%
ensure that lawyers operate within ethical standards?	19%	53%	15%	5%	8%
ensure that the public is served by a highly competent legal profession?	18%	56%	15%	5%	6%
discipline lawyers who are in violation of standards and practice?	16%	47%	21%	8%	8%
handle complaints about lawyers in a fair manner?	14%	52%	19%	6%	8%

<i>How would you rate lawyers in regard to ...</i>	Scale of 1 to 10: 1 = extremely poor and 10 = excellent			
	(8 – 10)	(4 – 7)	(1 – 3)	Don't know
expertise?	50%	43%	3%	4%
being respectful of clients?	44%	46%	7%	3%
trustworthiness?	38%	47%	11%	4%
acting in the best interests of clients?	36%	52%	9%	3%
service to clients?	34%	54%	8%	4%
efficiency?	29%	56%	11%	4%
your overall impression of lawyers?	28%	59%	12%	1%
giving good value for money?	16%	56%	24%	4%
commitment to public service?	15%	65%	13%	7%



Planning for succession – we can help

by Timothy E. McGee

THE PROSPECT OF winding down a law practice can be daunting, to say the least. This issue of *Benchers' Bulletin* features the Law Society's Practice Coverage and Succession Planning program, which was recently updated and enhanced to address a significant need.

Available on our website, the Law Society has developed a range of tools, model letters and other resources designed to help you create an effective succession plan and take the necessary steps to wind down your practice.

Why is this something that the Law Society wants to highlight now? The answer is that providing useful tools to help lawyers transition from active practice to retirement benefits everyone, lawyers and clients alike. But this is also part of a reality check when

you consider the changing demographics of the profession in BC. The average age of practising lawyers has risen over the years



and is now 48, with nearly 20% being 60 years of age or older. This trend will continue for some time and is widely known as

the "greying of the profession".

From a practical perspective, the trend is impacting sole and small firm practitioners more than those in larger law firms. However, the potential impact on clients who are seeking continuity of service and representation remains the same. The Practice Coverage and Succession Planning program helps the public stay connected to the legal services needed during the transition of a lawyers' practice — a small contribution to the larger access to legal services issue, but an important one nonetheless.

I hope you will take a few minutes to read about the program in this issue and to mention it to colleagues who may be interested. As always, we appreciate your ideas and feedback. You can contact me at ceo@lsbc.org. ❖

Survey of BC lawyers provides direction to Law Society communications team

IN NOVEMBER 2010, the Law Society commissioned a survey of BC lawyers to assess the various publications used by the Society to communicate with BC lawyers.

Specifically, the Society sought to better understand awareness, use and effectiveness of publications such as *Benchers' Bulletin* and E-Brief as well as the Law Society website, and to use this information to make any necessary improvements to communications tactics.

The survey results are now in hand and, while pleased to learn that lawyers

are generally satisfied with key publications, there is room for modest changes.

Notices to the Profession, *Benchers' Bulletin* and E-Brief are the most widely read publications and most lawyers find the information useful.

However, many of the survey findings highlight the fact that lawyers are challenged by pressures on their time. In order to maximize the effectiveness and value of Law Society publications, the Society will be exploring ways to make communications more relevant, concise and

user-friendly.

The first round of changes will be seen in the new website, which was launched on March 7, 2011. The Law Society looks forward to hearing how it has done in responding to comments and requests.

Thank you to all 500 lawyers who participated in the survey. The information is invaluable.

To view the full survey results, visit the Law Society website (Publications > Reports and Surveys). ❖

Law Society seeks to enhance regulatory oversight

THE LAW SOCIETY is always looking for ways to enhance the public's confidence in the legal profession's ability to effectively regulate itself. Much of the focus at the June 2009 Benchers retreat was on the topic of external regulatory oversight regimes, where regulatory decisions are overseen in some fashion by an independent agency.

OTHER JURISDICTIONS

During the past several years, a number of common law jurisdictions outside North America have introduced regulatory oversight regimes that have changed how the legal profession is governed and regulated. These include many Australian states, as well as New Zealand, and England and Wales.

The reasons behind these jurisdictions' regulatory changes vary, but two main drivers are apparent — the unsatisfactory handling of complaints against lawyers by regulatory and representative bodies and the growing trend towards treating legal services as a consumer commodity best suited to a competition-based market.

OPTIONS

At its March 4, 2011 meeting, the Benchers considered three options:

1. a review involving the provincial Ombudsperson;
2. a voluntary external review process;

3. a proactive "performance audit" or "credentialling" approach to public oversight, which would compare current operations and processes against best practices.

The first option looks at the BC Ombudsperson's existing role — to oversee the Law Society's regulatory and decision-making processes, on a case-by-case basis, as they relate to the Society's core functions and responsibilities. Is this sufficient to ensure the public's confidence in the Law Society's ability to effectively regulate the conduct and competence of lawyers, or should the Ombudsperson's role be expanded? If so, can this be done without undermining the independence of the legal profession? Also, should the Ombudsperson's present role be promoted more effectively to increase public confidence?

The second option, a voluntary external review process, must determine whether this can be done without compromising the public's right to an independent legal profession. As an example, the Law Society looked at the recent appointment of an independent observer by the Law Society of England and Wales's Bar Standards Board. As well, Ontario and Manitoba have for a number of years had Legal Complaints Commissioners, who review the law societies' handling of complaints. The functions of the commissioners are similar to

those of the Complainants' Review Committee in BC.

The third option, a performance audit of best practices, poses an interesting challenge in terms of the stated goal of enhancing public confidence in the Law Society's performance as a regulator in the public interest. While a certification model such as ISO (International Organization for Standardization) can be a useful tool in some industries for assessing performance and best practices, it may not be the best fit for achieving regulatory oversight objectives.

NEXT STEPS

The Benchers concluded that the third option, an oversight framework that is based on a performance audit and review of best practices, is the preferred model. Essentially, this model has three main components: determining the appropriate standards that a law society would be expected to meet; deciding how and by whom compliance would be monitored; and developing a set of best practices guidelines.

The Benchers also determined that the Law Society should enhance its communications with the public about the important role the Office of the BC Ombudsperson plays in reviewing the Law Society's handling of complaints against lawyers. ♦

New website

THE LAW SOCIETY recently rolled out its new website, which has been completely

overhauled to achieve a number of objectives.

In addition to a more contemporary look and feel, the site has been reorganized to be more user-friendly, provide greater transparency to Law Society work, and to take advantage of current best practices in web design. The new site is intended to provide better access to information for all key stakeholders, particularly lawyers, the public and the media.

"We've always had an extensive amount of information on our website," explains Robyn Crisanti, Manager, Communications and Public Relations, "but it hasn't always been

easy to find. Instead we have organized content based on our users and their needs, not our internal processes or departments, which we hope will make finding things more intuitive."

Prior to "going live" with the website on March 7, 2011, the site was made available to Law Society staff, Benchers and over 20 lawyer and public test users, who provided valuable feedback. "We have made a number of changes in response to the input from our test users and we will continue to make changes to constantly improve the utility of the site," said Crisanti.

To view the site, go to lawsociety.bc.ca. Any feedback or suggested changes can be sent to communications@lsbc.org. ♦



Invitation to lawyers to apply for appointment to hearing panel pool

THE LAW SOCIETY regulates lawyers in the public interest by ensuring that the people of BC are served by lawyers who meet high standards of learning, competence and professional conduct.

In furtherance of that mandate, Law Society hearing panels hear cases related to allegations of professional misconduct, breaches of the Law Society Rules and the *Legal Profession Act* and incompetence of lawyers. Panels also hold hearings on the character and fitness of applicants for enrolment in the admission program and for call to the Bar.

The Benchers have approved the expansion of tribunal membership to include non-Bencher lawyers and non-lawyers for the purpose of creating greater public confidence in the hearing process.

Hearing panels will consist of a current lawyer Bencher as chair, another lawyer who is not a Bencher selected from

the hearing panel lawyer pool and an individual who is not a lawyer selected from a non-lawyer pool.

Qualified lawyers are invited to volunteer to serve as members of the pool from which members of hearing panels are drawn. This is a part-time volunteer position. Reasonable expenses are reimbursed in full. Assignment to hearings will be on an as-needed basis.

The term of appointment to the hearing panel pool is three years, renewable once.

Successful applicants must be:

- members in good standing of the Law Society of BC;
- called to the bar for a minimum of seven years;
- not a current employee of or contractor to the Society.

Other restrictions and considerations

apply; see Highlights on the Law Society website for more information.

Lawyers appointed to the hearing panel pool will be required to take training courses in administrative justice and the Law Society processes and decision-writing. They are also encouraged to take the training course on hearing skills.

Qualified individuals are invited to send a curriculum vitae no later than April 30, 2011 to:

Jeffrey G. Hoskins, QC
Tribunal and Legislative Counsel
Law Society of British Columbia
845 Cambie Street,
Vancouver, BC V6B 4Z9
Email: jhoskins@lsbc.org

The Law Society encourages applicants that reflect the diversity of BC. We appreciate all interest and will directly contact candidates under consideration. ❖

In Brief

LAW DAY: APRIL 16

The 28th annual Law Day will be held on Saturday, April 16, from 10 am to 2 pm, at the CBC building, 700 Hamilton Street, Vancouver. It celebrates the theme *Access to Justice: The Changing Face of Law*.

Activities include a citizenship ceremony, free public forum, mock trial, displays and demonstrations.

Law Day is held on the final day of Law Week, which runs from April 9 to 16.

LAW FOUNDATION NEWS

Margaret Sasges, Chair of the Law Foundation of BC, is pleased to announce the appointments by the Law Society of Sandra

Dick and Eugene Raponi, QC, as governors of the Law Foundation for three-year terms commencing January 1, 2011.

Sandra Dick, appointee for the County of Nanaimo, was called to the Bar in 1990. She practised for several years with Cohen Buchan Edwards in Richmond and joined Heath & Company in Nanaimo in 1995, practising primarily family law. She has been the President of the Nanaimo City Bar Association since 1996 and Chair of the Nanaimo Family Law Section since 2008. She is also a past director of the Boys and Girls Club of Ladysmith.

Eugene Raponi, QC, appointee for the County of Victoria, was called to the Bar

in 1982. He is currently a partner at Waddell Raponi, where he practises civil litigation with a focus on family law, mediation and collaborative family law. He was an Executive member of the National Family Law Section and served as its Chair in 1999/2000. Raponi has also served as a member of the Executive Committee of the CBA, BC Branch and as Chair of its Advisory Committee to the Judicial Council (Provincial Court). He was on the Board of Directors of the Greater Victoria Citizens' Counselling Centre from 2004 to 2010.

JUDICIAL APPOINTMENT

James Bahen, QC was appointed to the Provincial Court in Surrey. ❖

Regional call ceremonies

Call ceremonies are an important rite of passage for new lawyers, one they want to celebrate with family, friends and colleagues. Regional call ceremonies allow them to be called to the bar in their own communities, without the inconvenience and expense of travelling to Vancouver. In 2010, 21 regional call ceremonies were held in communities across BC including Victoria, Duncan, Williams Lake, Nanaimo, Kamloops, Vernon, Kelowna, Prince George, Nelson, Cranbrook and Smithers.

On January 14, Bencher Tom Fellhauer held a call ceremony on the lands of the Okanagan First Nation for new lawyer Rosalie Wilson. "It was an excellent ceremony with a traditional Okanagan Nation celebration afterwards with singing, dancing and dinner," he said. "Madam Justice Beames and Court Clerk Martin Kortzman attended along with speakers Deborah Pearce (Vernon Bar Association), Bob Levin (CBABC Okanagan rep) and our own [Life Bencher] Patrick Kelly. The Court was quite accommodating in holding the ceremony outside of the Vernon courthouse."



Rosalie Wilson's call ceremony, left to right: Deborah Pearce, Patrick Kelly, Tom Fellhauer, Wilson, Madame Justice Beames and Bob Levin.

Lawyers sought to update online courses

THE LAW SOCIETY offers online courses to help lawyers improve and maintain their legal skills and, as of 2009, to comply with Continuing Professional Development (CPD) requirements. These online courses are available to BC lawyers through the lawyer login on the home page.

Keeping legal resources current and accurate is always a challenge and maintaining the large volume of material in the online learning section of the Law Society website is no exception. Updating the courses, particularly the Practice Refresher Course and the Small Firm Practice Course, requires a broad range of topics to be reviewed, updated and improved.

The Law Society is inviting lawyers to assist in updating discrete portions of the online materials, and at the same time fulfil the lawyers' CPD requirements. Here are the topics covered in the courses:

Areas of Practice

- Small Claims Practice
- Supreme Court Practice
- Wills and Estate Planning
- Probate and Estate Administration
- Real Estate
- Corporate Commercial
- Family

Practice Management

- The Accounting System
- Trust Accounting, Trust Filing and Trust Applications
- Taxation and Employee Deductions
- Harmonized Sales Tax (HST)
- Lawyer Retainers
- File Retention and Disposal
- Coverage during Absence
- Conflicts and Withdrawal of Services
- Client Screening and Dealing with

Difficult Clients

- File Management, Diary Systems, Delegation of Tasks and Supervision
- Avoiding Fraud

Lawyers selected will be provided with content for review and updating, and may work individually or in groups. The lawyers will be matched with topics they deal with in their everyday practices. The course materials are designed to be an overview of key topics, so it is not expected that substantial research will be required.

CPD credits can be claimed according to the time spent by each lawyer working on updates to the materials, to a maximum of six hours per assignment. If you are interested in working on content improvement and receiving CPD credits, contact Debra DeGaut at DDeGaut@lsbc.org and indicate in which topics you are interested. ❖

Thanks to our 2010 volunteers

THE BENCHERS THANK and congratulate all those in the profession and the legal community who volunteered their time and energy to the Law Society in 2010. Whether serving as members of committees, task forces or working groups, as PLTC guest instructors or authors, as fee mediators, event panellists or advisors on special projects, volunteers are critical to the success of the Law Society and its work.

Over the past year, the Society has enjoyed the support and contributions of over 300 Life Bencher and non-Bencher volunteers, all of whom deserve acknowledgement.

Alisia Adams	Jennifer Chow	Veronica P. Franco	Larry Kahn, QC
Quentin J. Adrian	Brent C. Clark	Stephen Fudge	Moses Kajoba
John N. Ahern	Janet L. Clark	Anna Fung, QC	Michael A. Kale
Paul Albi, QC	William T. Clarke	Barry D. Galbraith	Azmina A. Karim-Bondy
R. Vince Aldridge	Hugh H. Claxton	René J. Gantzert	Jocelyn M. Kelley
Ralston S. Alexander, QC	Kelly K. Connell	Mr. Justice Geoffrey Gaul	Callum G. Kelly
Joel M. Altman	JoAnne Corrigan	Jonathan R. Goheen	Patrick Kelly
Peter G. Altridge	Heather D. Craig	Edward P. Good	Judith Kennedy
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Rebecca A. Anderson	Azim Dato, QC	Jennifer L. Gray	Lesley Ann Kilgore
Dianne G. Andiel	Elaine M. Davies	Charlotte Gregory	Richard B. Killough
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John Bilawich	Darlene M. Dort	Roderick Henderson	Stanley Lanyon, QC
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Lino Bussoli	Kevin A. Filkow	Grand Chief Edward John	Thomas M. Lutes
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Pinder Cheema, QC	D. Christopher Fong	Jennifer Johnston	Kathleen J. MacDonald
Chilwin C. Cheng	Prof. Hamar Foster	David A. Joyce	Lisa M. Macdonell

A. Douglas Macfarlane
 David A. MacLeod
 William D. MacLeod
 William G. MacLeod
 Karen L. MacMillan
 Pat Madaisky
 Kenneth D. Madsen
 S. Nicola Mahaffy
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 Valerie Mann
 Phillip Marshall
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 Carol Dr. Matusicky
 Janis D. McAfee
 Emma A. McArthur
 Dennis G. McCrea
 Duncan McCue
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 Jerry McHale, QC
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 Brian E. Mickelson
 Jack Micner
 Robert G. Milne
 Jane Milton, QC
 Kar Miu
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 J. Cameron Mowatt
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 Mary M. Salaysay
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 David Sutherland
 Jill Swanston
 Etel R. Swedahl
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 Catherine Tyhurst
 Peter W. Unruh
 David H. Unterman
 Dr. Maelor Vallance
 James D. Vilvang, QC
 Kay M. Vinall
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 Mark Warkentin
 Lisa Warren
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 Eric Watson
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 Karen Whonnock
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 Loreen M. Williams
 Donald G. Wilson
 Louisa M. Winn
 Janet Winteringham
 Florence T. Wong
 So Yin Woo
 Mary E.B. Wood
 Bruce Woolley, QC
 Darcy Wray
 Katharine P. Young
 Joseph Zak
 Jerome D. Ziskrout
 Deborah L. Zutter ❖

In memoriam

WITH REGRET, THE Law Society reports the passing of the following members during 2010:

Marvin Bisal
 Bradley K. Bjorge
 J. Donald Brown
 William F. Christensen
 Margaret L. Eriksson
 James K. Fitzsimmons
 Cathie E. Grant
 William J. Hamilton
 Frederick C. Hislop, QC
 Robin Jackson
 Keith J. Kuhn
 Hugh P. Legg, QC
 John O.E. Lundell, QC
 Donald A. Lyons
 Steven G.R. MacMillan
 J. Donald Mawhinney, QC
 Douglas G. Morrison
 Philip D. Pool
 Patrick M. Thompson
 Michael D.W. Young ❖

PRACTICE WATCH, by Barbara Buchanan, Practice Advisor

Lawyers will be required to e-file LTO documents starting January 2012 – Are you ready?

THE LAND TITLE and Survey Authority of BC launched its Electronic Filing System (EFS) in 2004. LTSA Director of Land Titles, Craig D. Johnston, has informed the Law Society that he will announce, on March 11, 2011, that lawyers, notaries and land surveyors will be required to electronically file certain documents with the Land Title Office in a phased implementation plan. Filing paper documents will not be permitted, with limited exceptions.

To file documents electronically, a lawyer must sign them digitally, using a secure digital signing certificate (see "Registering with Juricert" on page 11). Once a document has been signed digitally by the lawyer, the lawyer can register it in the LTO or have it submitted electronically by another party (e.g. the lawyer's conveyancer or registry agent). As is now the case, a lawyer's conveyancer may prepare the documents but can't sign them. The lawyer will review the documents before submission to the LTO and will digitally sign them. Think of a lawyer's digital signature as a very secure kind of pen that only the lawyer can use.

Though the LTSA's timeline could change, lawyers will be required to file the following documents electronically as early as **January 1, 2012**:

- Form A Freehold Transfer of Fee Simple
- Form B Mortgage
- Form C General Instrument as a Release and as a Charge without an accompanying plan
- Claim of Lien Form, *Builders Lien Act*

The Director is also expected to announce limited exceptions to the electronic filing requirements and LTSA future plans. Subsequent phases will include subdivision plans, strata plans, Form C charges with an accompanying plan and Form 17 applications. Eventually, electronic filing will be required for most LTO applications and registrations.

The LTSA has recently added new features to the existing EFS and will pilot an

"electronic meets" service. Participants will have an option to log in to "meet" and see each others' documents, be alerted if any documents are removed or changed and use other features.

Before taking this step, the LTSA consulted with various stakeholders, including a survey of lawyers and notaries completed in December 2010. Director Johnston, a lawyer himself, appreciates that some real



Craig D. Johnston is the Director of Land Titles at the LTSA.

estate practitioners are apprehensive about e-filing. He notes, however, that "those who file electronically like it."

BENEFITS OF E-FILING

There are benefits to e-filing over manual filing: speed, convenience and security. Electronic filers won't receive a phone call from a frantic courier who travelled in a storm or heavy traffic only to arrive a minute after the LTO counter closed. Rush couriers to the LTO and the risk of documents being lost or misplaced along the way could be a

thing of the past. There are obvious "green" benefits as well.

E-filing allows you to submit documents whenever BC Online is available (currently 6 am to 10:50 pm Monday to Saturday and 1 pm to 10:50 pm on Sunday), but you should review your client's contract and any undertakings to ensure compliance with specific time limitations. Note whether there is a "time of the essence" clause.

You may also receive some new clients, as the LTSA website helps users find lawyers and notaries, by location, who use electronic filing (ltsa.ca/efs-locator).

There is a service charge to e-file, but other costs normally incurred, such as courier charges, are reduced or eliminated.

E-FILING AND RETENTION OF DOCUMENTS – WHAT TO DO?

Some lawyers have asked what to do with the paper version of real estate documents that they have e-filed. Section 168.6(1) of the *Land Title Act* provides that an electronic instrument that has been received by the registrar under s. 153 is conclusively deemed to be the original of the instrument. For example, an electronically filed Form A is the original, not the paper Form A with the actual signatures.

Lawyers concerned about retaining paper versions of documents (in the event the registrar requires their production for inspection after application but before registration pursuant to s. 168.51 of the *Land Title Act*), are encouraged to read the LTSA's Practice Bulletin 0306 (ltsa.ca/documents/ltd/bulletin_0306.pdf). Lawyers should be in a position to comply with inspection requests from the registrar before final registration of the electronic instrument.

In most cases, you can return the paper originals to the client by enclosing them with the final reporting letter. You will also want to keep a copy in the client's file (electronic file or paper file) for the normal file retention period (see Practice Watch in the November-December 2006 *Benchers' Bulletin*).

GETTING READING – JURICERT, EFS TRAINING, OFFICE NEEDS AND PROCESSES

If you're not e-filing and intend to file LTO documents in 2012, it's time to get ready. You'll need to obtain a Juricert digital signing certificate and to learn how to electronic file. You likely already have the basics to get started: a computer, printer, scanner, email, Internet connection, Adobe Acrobat and a BC Online account. Juricert advises that you will need either Google Chrome or Internet Explorer to download your Juricert digital signing certificate. The LTSA website has information about its minimum recommended EFS requirements (ltsa.ca/data/img/publication/EFS-System-Requirements.pdf).

REGISTERING WITH JURICERT AND OBTAINING A DIGITAL SIGNING CERTIFICATE

The LTSA contracts with the Law Society to act as a certification authority under the *Land Title Act*. The Law Society operates the Juricert service which authenticates applicants and issues digital signing certificates for use with the LTSA's electronic filing system. There is no charge for lawyers to register with Juricert or to obtain a signing certificate.

Law Society Member Services Representative Sherry Sarnowsky has helped many lawyers register with Juricert and obtain a signing certificate. "People think it's going to be a complicated process but it's not; it's simple," she says. Here's a brief overview:

- 1. Register with Juricert.** Go to the Juricert website (juricert.com) and complete an online registration form. Review the form, print it out, sign it (witnessed by a lawyer or notary) and fax it to Juricert for authentication. Juricert will check your information against Law Society records to confirm your identity and membership status (which normally takes two business days). Carefully take note of your Juricert identification number which you will receive during the registration process as you will need it for the next step. Your identification number is not your digital signing certificate.
- 2. Apply for a digital signing certificate.** Once you are notified by email that your authentication is complete, return

to the Juricert website to add EFS and obtain the digital signing certificate for use with Adobe Acrobat. Juricert will email instructions on when and how to download your digital signing certificate. You will need to use Internet Explorer or Chrome to download; Mozilla Firefox won't work. The certificate will allow you to digitally sign documents for electronic submission to the LTO via BC Online.

You are responsible for maintaining the security of your digital signing certificate and keeping your digital signing certificate password secure and confidential. Don't provide it to anyone else or let anyone else have access.

If you need assistance to register or download your certificate, contact Juricert support at 604-605-5307 or support@juricert.com. BC Online can assist you with the installation of your digital signing certificate for use with Adobe Acrobat and use of the EFS system. Contact the BC OnLine Help Desk at 250-953-8200 or toll free at 1-800-663-6102. The LTSA can also assist you to learn how to apply your digital signature to EFS forms using your signing certificate.

Note that non-payment of Law Society member fees will cause your Juricert registration to be suspended and you will not be able to electronically file LTO documents.

AN OFFENCE FOR YOUR ASSISTANT TO AFFIX YOUR DIGITAL SIGNATURE

Be aware that you must not allow anyone, including any staff member, to affix your digital signature to electronic filing applications, and that you must not use anyone else's.

Your digital signature is a representation that you are a "subscriber" as defined in the *Land Title Act*, that you have applied your digital signature in accordance with s. 168.3, and that a true copy or a copy of that true copy is in your possession.

Section 168.1 of the *Land Title Act* defines "subscriber" as follows:

"**subscriber**" means an individual who is authorized by a certificate to sign one or more of the following:

- (a) electronic applications;
- (b) electronic instruments;
- (c) electronic plan applications;
- (d) electronic plans;
- (e) electronic returns under the *Property Transfer Tax Act*;

An electronic instrument is signed for the purposes of s. 168.3 when a subscriber incorporates his or her electronic signature into the instrument in accordance with the requirements established by the director.

Also be aware of the offences set out in s. 168.9 of the Act:

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Dishonest conveyancers target lawyers in mortgage frauds

Dishonest conveyancers are targeting lawyers, often sole practitioners. First they become integral and trusted employees and then they abscond with mortgage funds, leaving you personally exposed, before moving on to their next victim. The Law Society of Upper Canada reported this problem in the Fall/Winter 2010 Ontario Lawyers Gazette, and a variation of the scam has recently surfaced in BC. These conveyancers are sophisticated and may work for you for a number of months before you realize that anything is wrong.

To protect yourself and your clients, you must supervise your staff and personally review documents. You should also separate office functions so that the conveyancer is not responsible for accounting, bookkeeping and banking.

For more information on how to protect yourself from fraud, including employee fraud, go to the Fraud Alert section of the Law Society's website (lawsociety.bc.ca) and read the *Gazette* article, "Beware: Dishonest conveyancers target lawyers," at rc.lsuc.on.ca/pdf/olg/2010/olg_fw10-mortgagefraud.pdf. Consult your insurance broker, as well, to help you determine how to best protect yourself.



Robin Adolphe travelled to Australia in February. He's pictured here at a cabin in the hills about 50 kilometres from Perth.

Planning ahead has one retiree sitting pretty

Robin Adolphe began his career as a teacher, but after 16 years, he decided to go to law school in 1981. After a long career where he worked as a partner at an 11-lawyer firm, opened his own practice with associates and eventually practised solo, the 67-year-old turned in his practice certificate last June, officially closing the door to his Penticton firm Adolphe & Company. While on holiday with his wife in Australia this past February, Adolphe took time out to talk about his own retirement process.

What steps did you take to retire/how did you plan to retire?

I did plan my future for nearly 20 years before retirement. So I was 45 or 46 when I started the first of my five-year plans. My first goal was to retire our residential

mortgage. My second was to contribute to both my wife's and my RRSPs so that they were equal in amount prior to retirement. I invested with some of my partners in a commercial building that would house our practice. We planned the building, got two

national firms as tenants, and then built.

When I left the partnership to practise on my own, I rented a commercial building at first and then bought the building from the landlord, who was a retired accountant, by purchasing the shares of his

company rather than the building itself. That choice had good tax consequences down the road.

How important is it to have a “nest egg” before retiring?

Most lawyers do not have a pension plan, unless they are with a large firm, are in-house counsel or practise in the public

sector. So your “nest egg” is your pension, so to speak.

How did you divest yourself of your practice?

My approach was to recognize that a sole practice has little value, so I did not try to sell it. In the first stage, I limited new files to ones I felt I could complete within a

couple of years. As time went on, I limited the files more until I was taking no new files, only working on the ones already in progress. By the end of 2009, I had found homes for many of the remaining files.

My criteria were to make sure that the new lawyer would look after my client’s

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Succession planning

MOST LAWYERS RECOGNIZE that retirement is a stage that must be planned for carefully, but many fail to contemplate how equally important it is to consider the unthinkable: “What if I am disabled through injury or otherwise for a short or long period of time — what will happen to my clients and my practice?”

If you work at a large or medium-size firm, the likely answer is that a colleague will meet your clients’ requirements. However, if you practise at a small firm or are a sole practitioner and haven’t made prior arrangements, your clients’ urgent needs may hang in the balance.

WHAT IS SUCCESSION PLANNING?

Considering planning for succession — who will succeed you when you no longer can or are not wanting to do the work — will provide a seamless transition for clients and everyone else who deals with your practice, as well as minimize disruption to you and your family.

Succession planning is one of those proactive initiatives that many lawyers feel they simply don’t have time to undertake. The problem is, if you don’t make time now to address the issue, you may be hit with it head on in the not-too-distant future.

WHY DO IT?

It is important to have a plan in place, both for unexpected absences and for when you want to leave your practice — either to pursue opportunities outside the law, or to enjoy your retirement.

Graeme Keirstead is the manager of Special Fund and Custodianships at the Law Society.

“Succession planning is estate planning for your law practice. First, you need to have in place a will for when you’re gone, and in this case a plan for retirement or career change and, secondly, you need to formalize practice coverage through a “winding up caretaker,” for when you’re incapable of looking after things yourself.”

Keirstead’s department frequently encounters practices where the lawyer is suddenly incapacitated, no plans have been made in advance by the lawyer for such circumstances and the Law Society is forced to seek a custodianship for the practice.

“I recently had to go into the Interior and haul out boxes of files from the crawl space under a lawyer’s residence. Among the surprises I’m sure the lawyer didn’t plan for were spider nests in the boxes. The custodians in our department have seen all kinds of things, including those that require rubber gloves. In many instances the entire custodianship could have been prevented with some planning by the lawyer.”

“A custodian isn’t necessarily the best outcome. A pre-chosen successor can serve a client’s ongoing needs,” said Keirstead, “while a custodian can’t do that. So there’s still the inconvenience for the client of having to find a new lawyer and perhaps some duplication of cost in bringing the new lawyer up to speed.”

Keep in mind, you owe ethical and professional obligations to your clients, and to not have a proper plan in place may put you at risk of an insurance claim.

Only 13% of sole practitioners have indicated on their trust reports that they have designated a winding up caretaker in

the event of death or disability.

Keirstead advises that lawyers should consider “buddying up” so that they can act as each other’s winding up caretaker.

“Then you can look into insurance, so that in the event you need to act as the winding up caretaker, you will have funds to make the practice liquid enough to take over.”

BENEFITS OF PLANNING FOR LAWYERS, CLIENTS AND THE LAW SOCIETY

According to Keirstead, the comparison between succession planning and estate planning can’t be overstated.

“If I pass away without a will, instead of my wishes going forward in relation to my assets and me controlling the security for my loved ones, it goes by statute, so there’s no tax planning advantages and I lose influence over the process. It’s the same for your practice, except that instead of the *Estate Administration Act* kicking in, it’s the *Legal Profession Act*. Then the Law Society has to apply to court to have a custodian appointed and, instead of leaving an asset for your estate, you’ve left a potential liability for surviving members of your family. The Act entitles the Law Society to seek costs for the expense of the custodianship against the member or the estate.”

“Beyond the lawyers themselves, and their families,” said Keirstead, “the ultimate beneficiaries of advance planning are the clients, who will have some certainty and continuity of care, and the members of the Law Society who will not see the costs of running the custodianship department rise.”

Resources

Getting or becoming a winding up caretaker

To assist you in planning ahead, the Law Society has published sample documents on the society's website (lawsociety.bc.ca) for both the unincorporated and incorporated lawyer, including:

- Law Practice Coverage Agreement between lawyer, practice attorney/trustee and, if applicable, law corporation
- Power of Attorney granted by the lawyer and, if applicable, law corporation, to the practice attorney/trustee
- Will (relevant extracts) by the lawyer, appointing the practice attorney/trustee and, if applicable, giving that lawyer powers over your law corporation
- Gatekeeper Agreement between the lawyer and the gatekeeper

Establishing a plan

The following documents are also available on the website to help you establish a plan to retire your practice and prepare the necessary documentation to protect your clients' interests and assist your staff and your practice attorney/trustee:

- Checklist – Practice and Planning Considerations
- Law Firm Checklist
- Law Office Contacts and Basic Information
- Winding Up a Sole Practice: A Checklist
- Winding Up a Firm: A Checklist

Other resources

- On March 11, 2011, the Law Society participated in an event hosted by the Continuing Legal Education Society of BC and the Canadian Bar Association, BC Branch, entitled *Putting success into succession planning for the solo and small firm lawyer*. Materials are available through Continuing Legal Education (cle.bc.ca).

The numbers in BC

Sole practitioners

- There are 2,305 sole practitioners in private practice
- 29% of insured lawyers are sole practitioners
- In 2000, 45% of insured sole practitioners were over the age of 50
- 67% of insured sole practitioners are now over the age of 50
- Only 13% of sole practitioners have indicated on their trust reports that they have designated a winding up caretaker in the event of death or disability.
- Of those who filed trust reports, 65% are over 50, and 12% of those over 50 indicated they have designated a winding up caretaker.

Retirement

- Financial advisers typically suggest you'll need 70-80% of your pre-retirement income in retirement
- The Government of Canada has developed an on-line calculator (servicecanada.gc.ca/eng/isp/common/cricinfo.shtml) to help plan for retirement

Planning ahead ... from page 13

interests properly and that the file would be completed in a reasonable time. I was not entirely successful in that endeavour. By 2010 I had about five or six files remaining, but by June I had either completed the files or farmed them out.

How did you manage your clients and client records?

I kept in contact with my clients and made sure that their files were transferred. I was fortunate in that my long-time legal assistant went to work for my former firm and she was able to continue with some files.

What effect did your retirement have on your clients?

My clients were very supportive and, in some cases, a bit envious. As I said, I tried to make sure they would be happy with their new lawyers. Where there were problems, I did a second referral and kept myself available. I had only one instance where I had to apply to be removed from the record — a file that I knew I should not have taken in the first place, but I was always seen as the lawyer in town who would take files that other lawyers would not.

How has the planning and preparation you did before and during the retirement process affected your ability to enjoy your retirement now?

The critical part of the planning is to do a financial statement showing what your yearly expenses are and then determine which expenses will either stop (saving 10+ per cent of your net income a year, RRSPs, professional fees, office expenses, additional insurance, etc.) or can be eliminated (for example, the mortgage on the building where I practised.). I felt that it was logical to assume that my wife and I would be able to live a reasonable lifestyle with an income of \$60,000 each. That would allow us to be in the income bracket that had a lower tax.

As it turns out, we are doing very well and my investments have been successful to the extent that the next 20 years seem to be reasonably well provided for.

What advice do you have for sole practitioners who are ready to retire now?

I would tell them that they should sit down with an accountant and go over their assets, cash flow, and expenses expected in

retirement. I know of many lawyers my age who simply cannot afford to retire completely — especially those with a second family.

What advice do you have for sole practitioners, who are perhaps in their 50s and may be some years away from retirement, for how they can start planning now to make the transition to retirement smoother later?

Again, get a good accountant and do some planning for the future. Get rid of as many sets of keys as you can. By this I mean get rid of condos, cabins, boats, planes, cars, etc. Every set of keys carries with it numerous expenses, including maintenance, insurance, financing, etc. Simplify your life.

How have you enjoyed retirement so far? Any highlights?

I had expected to enjoy retirement and I have. I like working around the house and I have many interests. We travel a fair amount. We find that we don't need many things, so we can afford a few luxuries. We have more big-screen TV sets than anyone should have. After a working life of 45 years, I find the freedom from the demands of employment to be the best thing.

Is there anything about being retired that surprised you?

I think that the lawyers who had no life before retirement are the ones who will have the most difficulty. One that comes



Since retirement, Robin Adolphe has more time to spend with his grandson.

to mind told me that he would not know what to do if he retired, so I guess he will die at his desk.

I get up early and try to be at the gym every morning between 6 and 6:30 am. I get the *Globe and Mail*, which I read during cardio and then return home to my computer where I trade any stocks that need trading. I am finished by 9 or 10 am, at which time I watch three news channels and three business channels. I then head outside to do yard work or inside to do

handy work. I have lunch and then a nap. Afternoons are either more yard work, a walk, cycling, or whatever comes along. It seems a short time before 4:30 when I quit for the day.

I do a lot of reading and have found the wonders of the public library. The internet is a constant source of information and entertainment. I have a box that allows me to record TV shows that always seem to be on at an inconvenient time. I love it. ❖

Unauthorized practice of law

UNDER THE *LEGAL Profession Act*, only trained, qualified lawyers may provide legal services and advice to the public. Further, non-lawyers 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 providing legal assistance, the Society will investigate and take appropriate action if there is a potential for harm to the public.

From December 3, 2010 to February 22, 2011, the Law Society obtained undertakings from 10 individuals and businesses

not to engage in the practice of law

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

Gongyou Mo (a.k.a. **Jason Gongyou Mo**) and **Candvelop Business Inc.**, of Burnaby, were found to have offered to prepare divorce documents, a separation agreement and a will for a fee. They have consented to an order not to practise law as defined in section 1 of the *Legal Profession Act*. They paid the Law Society \$3,000 in costs.

Syed Nadir and **HSN Accounting & Tax Services Ltd.**, of Surrey, were found

to have offered to incorporate a company and prepare a shareholders' agreement for a fee. They have consented to an order not to practise law as defined in section 1 of the *Legal Profession Act*. They were further ordered to pay \$1,500 to the Law Society in costs.

Ian McLellan (d.b.a. **Consensus Mediation Services**), of Nanaimo, was found to have offered legal advice and to draft divorce documents and a separation agreement for a fee. He has consented to an order not to practise law as defined in section 1 of the *Legal Profession Act*. ❖

PRACTICE TIPS, by Dave Bilinsky, Practice Management Advisor

Multi-disciplinary practice

♪ *Come together right now over me...* ♪

Lyrics and music by Lennon/McCartney

MULTI-DISCIPLINARY PRACTICE (MDP) has been allowed in British Columbia for about half a year now (see Rules 2-23.1 to 2-23.12). Despite concerns that allowing non-lawyers to be partners in a law firm would open the floodgates, at the time of writing of this column, no applications for MDPs have been received by the Law Society. However, there have been many inquiries about MDPs and the benefits they offer to lawyers, and several people have requested the information packages. For that reason, this column outlines some of the benefits, requirements and conditions of an MDP in BC.

WHAT IS AN MDP?

Law Society Rule 1 defines an MDP as follows:

“multi-disciplinary practice” or “MDP” means a partnership, including a limited liability partnership or a partnership of law corporations, that is owned by at least one lawyer or law corporation and at least one individual non-lawyer or professional corporation that is not a law corporation, and that provides to the public legal services supported or supplemented by the services of another profession, trade or occupation;

An MDP allows a non-lawyer to have an ownership interest in an entity that carries on the practice of law along with the practice of the other non-lawyer professional. Some of the possibilities that an MDP offers are:

- An accountant teams up with a lawyer to provide:
 - corporate and business planning advice (resulting in an entity that can be a one-stop shop to establish and advise a new or existing business from both a legal and a financial management perspective); or
 - estate and tax planning advice (resulting in an entity that can draw

wills, inter vivos and family trusts as well as provide tax and estate planning advice).

- A mortgage broker, real estate agent, insurance broker and lawyer join forces to provide a complete solution to purchasing, financing, insuring and selling real estate.
- An engineer, architect and lawyer combine to provide real estate development services.
- A family counsellor and lawyer go into business to provide family law counselling and divorce services.

So the question is, how do a lawyer and another professional work together under our regulations to operate an MDP?

THE APPLICATION PROCESS

You must complete an application to practise law in an MDP in accordance with Rule 2-23.3. This includes paying the application fee and the investigation fee (for the non-lawyer member) and submitting copies of the proposed partnership agreement.

RULE REQUIREMENTS

You must ensure that the non-lawyer partner provides no services to the public except those that support or supplement the practice of law under the supervision of a lawyer. You must further ensure that:

- privileged and confidential information is protected (Rule 2-23.8);
- conflicts of interest are prevented (Rule 2-23.9);
- every member of the MDP has liability insurance (Rule 2-23.10);
- trust accounts and trust records are maintained (Rule 2-23.11); and
- all non-lawyer members agree to the conditions set out in Rule 2-23.2.

GOING FORWARD

After the MDP is established, you will have to notify the Law Society if:

- a lawyer ceases to practise in an MDP;
- a new member of the MDP is proposed;

- a member of the MDP ceases to be a member of the MDP, or ceases to be involved in the management or delivery of services of the MDP; or
- there is any change in the partnership agreement or other contract that affects the terms under which members participate in the MDP.

If a new non-lawyer proposes to join the MDP, you must notify the Law Society and pay the investigation fee (Rule 2-23.5).

The Law Society can cancel permission for a lawyer to practise in an MDP, if the lawyer is not complying with Rules 2-23.1 to 2-23.12.

The lawyer member of an MDP must also ensure that all non-lawyer members of the MDP:

- practise their profession, trade or occupation with appropriate skill, judgment and competence (Rule 2-23.7(2)(a));
- comply with the Act, Rules and Handbook, including conflict of interest provisions;
- provide no services to the public except those that support or supplement the practice of law by the MDP and under the supervision of a lawyer,
- maintain liability insurance.

Trust funds received by the MDP must be handled in accordance with Rule 2-23.11, and the MDP must maintain its trust account and trust accounting system in accordance with Part 3, Division 7 of the Rules.

Lawyer members of an MDP must report annually to the Law Society regarding compliance with these requirements (Rule 2-23.12).

Like most changes, the MDP rules are still very new and unfamiliar. It is anticipated that, as lawyers (and non-lawyers) get accustomed to the provisions, there will be applications made and approvals given to proposed MDP members to come together. ❖

Practice Watch ... from page 11

A person commits an offence if the person

- (a) incorporates his or her electronic signature into an electronic application, electronic instrument, electronic plan application or electronic plan without first complying with the provisions of this Part, or
- (b) incorporates the electronic signature of another person into an electronic application, electronic instrument, electronic plan application or electronic plan.

FREE EFS TRAINING AND CPD CREDIT

The LTSA currently offers a free two-hour EFS training course at locations in Metro Vancouver and via webinar anywhere in the province. Lawyers can apply to the Law Society for two hours of continuing

professional development credit for taking the course (course no. LTSAEFS01).

To take the course, contact the BC On-Line Help Desk at 1-800-663-6102 or 250-953-8200 or bcolhelp@accessbc.com.

In addition to the EFS training course, the LTSA provides online tutorials, an EFS User Guide, practice bulletins and other information: see their website at ltsa.ca. The Continuing Legal Education Society's courses, *Land Title Practice Manual*, *Land Title Forms Guidebook* and *BC Real Estate Practice Manual*, are additional resources.

FURTHER INFORMATION

Read the LTSA's announcement for important details and any changes to the information provided here (www.ltsa.ca).

Contact Practice Advisor Barbara Buchanan at 604-697-5816 or bbuchanan@lsbc.org for confidential advice or more information regarding any items in Practice Watch. ♦

FROM BC ASSESSMENT

Warning re managed forest land

PURCHASERS OF PRIVATE managed forest land should be aware that the land may be assessed at a higher value to account for the economic benefit of timber that was previously harvested on that land. Exit fees may also be charged if the property is removed from Private Managed Forest Class.

The property class that deals with private managed forest land is Class 7 Private Managed Forest Land. Land in this class is valued on a two-part basis, as detailed in section 24 of the *Assessment Act*:

- the bare land value, which incorporates such factors as soil quality, accessibility, topography, parcel size and location; and
- the added value of the timber on the land, which becomes assessable when it is harvested. For example, timber harvested in the calendar year 2009 will show up as added value on the assessment notice of a forest land property for the 2011 assessment roll. For property taxes payable in the summer of 2011, part of the value may come from the harvesting of trees two years previously.

The land and harvested timber are valued

on the basis of legislated rates prescribed by BC Assessment through regulation each year.

Prospective purchasers of property classed as forest land are advised to enquire about previous harvesting on the property, and its possible property tax implications.

Exit fees may be incurred for those properties removed from Managed Forest Class. The exit fee is intended to encourage long-term participation in the Managed Forest Program and is applied to property that is removed from Managed Forest Class prior to a 15-year timeframe. Exit fees are administered by the Private Managed Forest Land Council (PMFLC).

Information on exit fees is available on the website of the PMFLC at pmflc.ca or by phone at 250-386-5737.

For more information on managed forest land assessment or details on your managed forest property assessment, contact: Assessment and Valuation Services, BC Assessment, Head Office, 400 – 3450 Uptown Blvd., Victoria BC V8Z 0B9, Tel. 250-595-6211 ext. 256, toll-free 1-800-661-2116, email bca.avs.non-residential@bcassessment.ca. ♦

Services for lawyers

Practice and ethics advisors

Practice management advice – Contact David J. (Dave) Bilinsky, Practice Management Advisor, to discuss practice management issues, with an emphasis on technology, strategic planning, finance, productivity and career satisfaction. Email: daveb@lsbc.org Tel: 604-605-5331 or 1-800-903-5300.

Practice and ethics advice – Contact Barbara Buchanan, Practice Advisor, Conduct & Ethics, to discuss professional conduct issues in practice, including questions about client identification and verification, scams, client relationships and lawyer/lawyer relationships. Tel: 604-697-5816 or 1-800-903-5300 Email: advisor@lsbc.org.

Ethics advice – Contact Jack Olsen or Warren Wilson, QC, staff lawyers for the Ethics Committee, to discuss ethical issues, interpretation of the *Professional Conduct Handbook* or matters for referral to the committee. Contact Jack at: Tel: 604-443-5711 or 1-800-903-5300 Email: jolsen@lsbc.org. Contact Warren at: Tel. 604-697-5837 or 1-800-903-5300 Email: 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.

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FROM PPC CANADA EAP SERVICES

Healthy diet, healthy weight, healthy you

by Ramona Josephson, RD, nutrition consultant for PPC Canada

TIRED OF LOSING weight only to gain it back again?

Need to lower your cholesterol, blood sugar or blood pressure?

Working at less than peak performance?

Want to be a role model for your family?

Small, strategic decisions about what and when you eat can boost your energy, help manage your weight and improve your health.

Here are five top tips to a healthy diet, a healthy weight, a healthy you:

1. IT'S ALL ABOUT TIMING

Food is designed to give you energy and nourish your body. Skipping meals or going for hours without food is like running on empty. Your body can stall too, just like a car. Keep it fuelled and it keeps on going.

When you supply your body with energy throughout the day, your metabolic rate stays up and you feel more energetic. You prevent headaches, grogginess and over-indulging.

2. MANAGE YOUR PORTIONS

Weight-loss is a simple case of math: calories-in must be less than calories-out to see a change in weight.

For healthy weight-loss, you need a minimum of 1,300 to 1,600 calories a day. Don't eat less. It will slow down your metabolic rate and when you (inevitably!) return to your old eating habits, it is easy to gain that weight back. Even worse, what you gain back is fat rather than muscle, making it harder to lose weight, because fat cells burn energy more slowly.

To maintain a healthy weight, adjust your caloric intake by adding more calories based on your activity level. Also, the more you weigh, the more calories you need to carry the extra weight.

3. START THE DAY WITH BREAKFAST

The first step to powering your day is to eat breakfast. It will kick-start your metabolism

and get you going for the day. Don't take just *my* word for it. The National Weight Control Registry monitored 4,500 dieters who successfully lost over 30 pounds and kept the weight off for over one year. They all had one thing in common: they ate breakfast! So should you.

Some simple, well-balanced breakfast choices:

- oatmeal with banana and flax-seeds;
- veggie omelet with whole-grain toast;



- high-fibre cereal and low-fat milk;
- poached eggs on whole-grain toast with grilled tomato;
- fruit and yogurt smoothie.

4. SNACK SMART

Do you snack between meals? Snacking is a national past-time. We all do it — and so we should. Snacking between meals more than four hours apart will keep your blood sugar level, keeping you in control. Have a small snack, even if you're not hungry. You won't feel like a vacuum cleaner when you arrive home after a long day at work, ready to eat anything in sight.

The key is to snack smart. Try to avoid foods high in sugar. The sugar rush gives

you a quick boost of energy, followed by an energy crash, which makes you crave more sugar.

Try one or two of these 90-calorie healthy snack choices:

- 1 medium fruit, eg apple, grapefruit;
- ¾ cup (175g) low-fat yogurt, no sugar added;
- 1 cup (250 ml) low-fat latte;
- 12 almonds or 8 walnut halves;
- veggie sticks with 1 oz of cheese or 1 tbsp hummus.

5. DRINK ... WATER!

Water is essential to health. After all, your body is made up of 70% water. You need water to circulate nutrients to, and remove waste from, your cells. Lack of water can lead to fatigue, so it makes good sense to drink lots.

Try to consume 6 to 8 glasses of fluid a day in the form of water, clear tea or decaffeinated coffee. Veggie juice and soup count too. Alcohol and drinks containing caffeine, such as coffee and colas, act as diuretics, removing water from your body.

Eating smart works!❖

Ramona Josephson, RD, is the president of www.weightlossdeal.com. She is a best-selling author with the Heart and Stroke Foundation of Canada, media spokesperson for Dietitians of Canada and a renowned nutrition and weight-loss coach. Her clients' success stories have been published in national and provincial media

BC lawyers and their immediate family members are entitled to a nutritional coaching package administered by Josephson as part of the benefits program provided by PPC Canada.

Call 1-800-663-9099 to enrol in or learn more about this and other wellness programs provided by PPC Canada.

Discipline digest

PLEASE FIND SUMMARIES with respect to:

- Richard Donald Payne
- George Coutlee
- Clayton Bruce Williams
- Sanjeev Sanj Rai
- Randall Keith McRoberts
- Bradley Darryl Tak
- Douglas Warren Welder

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

RICHARD DONALD PAYNE

Port Coquitlam, BC

Called to the bar: May 11, 1982

Discipline hearing: November 10, 2010

Panel: David Mossop, QC (single Bench panel)

Report issued: December 16, 2010 (2010 LSBC 28)

Counsel: Stephen B. Jackson for the Law Society and R. Keith Oliver for Richard Donald Payne

FACTS

Between March 25 and May 21, 2010 the Law Society phoned Richard Donald Payne twice and sent three letters requesting a written response to a complaint made by a former client. Payne was advised of the deadlines for response; however, the Law Society did not receive a substantive written response to the complaint until August 2010.

ADMISSION AND DISCIPLINARY ACTION

Payne admitted, and the panel agreed, that his failure to respond to Law Society communications in a timely manner was professional misconduct.

The panel considered Payne's professional conduct record in determining penalty. He had a prior citation for failure to respond to the Law Society in 1995, which he admitted to in 1997.

The panel determined that there were some circumstances that could be viewed as mitigating. Payne's admission in this case reduced the amount of time required to prepare and conduct the hearing. Also, aside from the issue of timeliness, his written response regarding the client complaint was deemed adequate for the purposes of the Law Society's investigation.

Payne also submitted as a mitigating factor the unfortunate death of his father. The Law Society noted, however, that in his 1995 citation for failure to respond, the death of his mother was offered as a mitigating factor.

The panel decided that the most important factors in this case were the need for specific and general deterrence and to ensure the public's confidence in the integrity of the legal profession.

The panel ordered Payne to pay:

1. a \$4,000 fine; and
2. \$1,000 in costs.

GEORGE COUTLEE

Kamloops, BC

Called to the bar: January 10, 1978

Discipline hearing: October 5, 2010

Panel: Bruce LeRose, QC, Chair, Ralston S. Alexander, QC and Leon Getz, QC

Report issued: December 16, 2010 (2010 LSBC 27)

Counsel: Maureen Boyd for the Law Society and George Coutlee on his own behalf

FACTS

In July 2006, George Coutlee was retained by a brother and sister to provide legal services with respect to the will and estate of a deceased relative. There was a dispute among the beneficiaries as to the proper administration of the estate and the validity of the will.

Representing these clients in a wills and estates matter, however, was contrary to an order made by a disciplinary hearing panel on January 13, 1997, under which Coutlee was suspended from the practice of law in all fields except for criminal defence and personal injury claims.

When the clients first met with Coutlee, they did not have any money to pay legal fees. Coutlee stated that he did not require payment of a retainer, and this was a factor in the clients' decision to retain him.

In December 2006, at the request of one of the clients, Coutlee prepared a contingency fee agreement made as of September 1, 2006. While one of the clients signed the agreement, the other client refused.

In January 2007, the clients advised Coutlee that they no longer required his help and asked him to forward their file to a new lawyer. Coutlee initially refused to provide his personal notes and memoranda on the basis that this material belonged to him and he had not been paid for it.

One of these former clients subsequently made a complaint about Coutlee to the Law Society.

ADMISSION AND DISCIPLINARY ACTION

Coutlee admitted that, in 2006 and 2007, he provided legal services in a wills and estates matter and that he knew that he was precluded from practising in such matters by the practice restriction imposed upon him by the 1997 hearing panel. He admitted that his conduct constituted professional misconduct.

In determining the appropriate disciplinary action, the panel took Coutlee's admission into consideration along with a number of other key factors.

The panel noted the continuing nature of the misconduct over a period of approximately five months, but weighed this against the fact that this matter was the only evidence of a breach of the 1997 order.

Coutlee's professional conduct record was reviewed by the panel. In addition to the hearing from which the practice restriction was ordered, there were several other unrelated incidents of misconduct. The earlier discipline outcomes indicated to the panel that the more benign penalties imposed were not sufficient to effect a modification of his behaviour.

It was the view of the panel that, given the significant unpleasantness for

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Coutlee that accompanied this disciplinary process, there was no likelihood of a recurrence of the offending behaviour.

Regarding the nature and gravity of the conduct, the panel found that the blatant disregard of a restriction on practice imposed by a hearing panel must be regarded as misconduct of a most serious nature. The panel agreed that Coutlee deserved some credit for his cooperation and that a more extensive suspension would have been imposed in the absence of this mitigating factor.

The panel decided it was necessary to communicate a condemnation of Coutlee's behaviour for the benefit of other lawyers who might consider restrictions on practice areas to be more in the nature of guidelines than of prohibitions. It is imperative that the public interest is protected whenever restrictions on practice are imposed, and the panel wanted to ensure lawyers are clear that breaches of those prohibitions will be treated seriously.

The panel ordered that Coutlee:

1. be suspended from practice for one month; and
2. pay \$5,000 in costs.

CLAYTON BRUCE WILLIAMS

Kelowna, BC

Called to the bar: May 20, 1994

Discipline hearing: November 8, 2010

Panel: Gavin Hume, QC, Chair, Haydn Acheson and Thelma O'Grady

Report issued: December 22, 2010 (2010 LSBC 31)

Counsel: Maureen Boyd for the Law Society and Henry Wood, QC for Clayton Bruce Williams

FACTS

Clayton Bruce Williams represented a client in legal matters arising from the expansion of some commercial property. He took instructions from a principal of the client. The principal resided in Halifax.

On September 4, 2009, the principal instructed Williams to immediately file a claim of builders lien on the property. Due to the differences in time zones between Halifax and Kelowna, there was some time pressure to complete the filing. Williams registered a lien against title to the property that day.

On September 9, 2009, the principal instructed Williams to remove the lien immediately. On the morning of September 10, he advised the principal that he would email a form of release that the principal would need to sign and return. He also told the principal that he would file an electronic release of the lien on the principal's agreement to send the original to him.

Later that day, Williams received an emailed copy of the release of lien, which was signed by the principal, but his signature was not properly executed and witnessed. Due to the sense of urgency, he applied his electronic signature to the release of lien form and submitted it electronically to the Land Title Office, even though he knew that the release did not satisfy the requirements of the *Land Title Act*.

On October 20, 2009, Williams wrote to the Law Society and self-reported his conduct.

ADMISSION AND PENALTY

Williams admitted that he applied his electronic signature to an electronic

document for filing in the Land Title Office when he knew a true copy of the document had not been properly executed and witnessed in accordance with the *Land Title Act*. He further admitted that his conduct constituted professional misconduct.

The panel stated that the electronic submission of improperly executed documents must be viewed as serious. As officers under the *Land Title Act*, lawyers play a key role in ensuring the integrity of transfer documents and safeguarding the system from fraud. Williams made a bad decision on the basis of expediency and client pressures.

Williams is also an example, however, of how a lawyer can exercise integrity and professionalism to take ownership of a mistake. His candid acceptance of responsibility, his self-reporting and his acceptance of the consequences to his professional reputation demonstrated a high level of integrity.

The panel concluded that Williams was guilty of professional misconduct and ordered that he:

1. be reprimanded; and
2. pay \$2,000 in costs.

SANJEEV SANJ RAI

Surrey, BC

Called to the bar: May 23, 2001

Discipline hearing: November 24, 2010

Panel: David Mossop, QC (single Benchers panel)

Oral decision issued: November 24, 2010

Report issued: January 19, 2011 (2011 LSBC 02)

Counsel: Jaia Rai (no relation to the respondent) for the Law Society and William S. Clark and Scott Marcinkow for Sanjeev Sanj Rai

FACTS

From February 2004 to February 2005, Sanjeev Sanj Rai represented multiple parties in 12 real estate transactions involving mortgage financing, which were referred to him by the same realtor. All of the properties were condominiums. The transactions were fraudulent and part of a sophisticated scheme designed by the realtor to obtain mortgage proceeds under false pretences.

The realtor referred each of the transactions to Rai after the respective contracts of purchase and sale and addenda, where applicable, had already been purportedly executed by the parties. At the realtor's direction, Rai did not take instructions from his purchaser clients to perform any strata specific searches.

In four of these transactions, Rai did not prepare all of the relevant documentation, meet with all of the clients, or oversee all of the closings, because he was out of the country for three weeks. Instead, he improperly delegated various duties to his staff who worked on these transactions unsupervised for the most part.

Overall, Rai failed to make any inquiries to assess the *bona fides* of the transactions or his purchaser clients, who were not at arm's length from the realtor. He failed to recognize the fraudulent nature of the scheme and the many red flags raised by the characteristics of the transactions.

In addition, he failed to disclose material facts to his lender clients, and failed to provide adequate legal advice to, and protect the interests of, his purchaser and lender clients. He also abdicated his professional responsibility by improperly delegating tasks to support staff and representing

various parties while in a conflict of interest.

ADMISSION AND DISCIPLINARY ACTION

Rai admitted that his conduct in each of the allegations constituted professional misconduct. With respect to the mortgage fraud allegation, he admitted that he ought to have known the scheme was fraudulent. He did not admit to knowing at the time that the transactions were fraudulent, and the Law Society accepted that this admission was consistent with the evidence.

Lawyers have an obligation to the public to be vigilant. The misconduct in this case was extremely serious, notwithstanding that Rai did not knowingly facilitate mortgage fraud.

In determining the appropriate penalty, the panel took mitigating factors into consideration.

The fraudulent mortgage transactions occurred in a rising real estate market and at a time when there was minimal, if any, publicity or information about fraudsters targeting lawyers to facilitate mortgage fraud.

Rai had a professional conduct record and was subject to practice supervision by another lawyer from December 2004 to July 2006 and practice reviews by the Law Society from November 2004 to May 2007. This period of supervision was overlapping with the transactions that occurred between February 2004 and February 2005.

The panel recognized that Rai's misconduct stemmed from his inexperience in the area of real estate law. His actions were not motivated by personal gain and did not result in any financial benefit beyond the modest fees billed for the work performed. It also appeared that the lenders who may have suffered a loss as a result of Rai's conduct have recovered their losses.

In this case, an oral decision was given before the written reasons to enable the suspension to begin shortly after the hearing.

The panel ordered that Rai:

1. be suspended for three months; and
2. pay \$11,500 in costs.

RANDALL KEITH McROBERTS

Invermere, BC

Called to the bar: September 16, 1974

Discipline hearings: November 20, 2009 and February 1, 2010 (facts and verdict) and November 1, 2010 (penalty)

Panel: Richard Stewart, QC, Chair, Kathryn Berge, QC and David Mossop, QC

Reports issued: July 27, 2010 (2010 LSBC 17) and February 14, 2011 (2011 LSBC 04)

Counsel: Maureen Boyd for the Law Society and Henry Wood, QC for Randall Keith McRoberts

FACTS

In 1994, Randall Keith McRoberts began representing a non-profit service club on a *pro bono* basis.

The club was given ownership of real property on the condition that it be used for a golf course or some other community purpose. McRoberts represented the club in pursuing an easement from an adjacent property for the purpose of drawing water from a nearby lake.

In August 1995, McRoberts sent a form of easement in favour of his client to the owners of the adjacent property, who were unrepresented by counsel. He requested the return of both executed documents on his undertaking not to use the document or register same unless the golf course development was actually going to proceed and he had the written permission of the owners to register the easement.

In June 1996, McRoberts breached his undertaking when he registered the easement in the Land Title Office without obtaining the written permission of the owners. His explanation for the breach was that he did not remember that he had given the undertaking.

VERDICT

McRoberts admitted that he breached the undertaking; however, he did not admit to professional misconduct. The hearing panel considered the proper interpretation of the "marked departure test" for professional misconduct in the context of a lawyer forgetting about an undertaking, and whether, in this case, the exception for honest mistake applied.

The panel found that McRoberts' conduct was of a serious nature that went to the heart of his obligations as a lawyer. These circumstances were clearly a marked departure from the standard expected of a lawyer, and there was no evidence that would support a defence of innocent mistake. The panel determined that McRoberts had committed professional misconduct.

PENALTY

The panel considered a number of factors in determining penalty. The subject matter was a community project, and legal services had been provided on a *pro bono* basis. McRoberts had registered the easement because his client had indicated that it was permissible to do so, and he did not remember that he had given the undertaking. He admitted to the panel that he had made a mistake.

McRoberts has a conduct record, but no misconduct dealing with undertakings. Numerous letters of support were submitted by his fellow lawyers stating that he had given many undertakings and fulfilled all of them.

This breach occurred over 14 years ago and the original complaint was made in 2004. Counsel for McRoberts submitted that the panel should look at the lower penalties imposed at that point in time. The panel agreed in these circumstances, but was not prepared to accept this as a general proposition.

The panel ordered McRoberts to pay:

1. a \$1,000 fine; and
2. \$2,000 in costs.

BRADLEY DARRYL TAK

Port Moody, BC

Called to the bar: February 15, 1991

Discipline hearings: December 6, 2010 and January 27, 2011

Panel: Joost Blom, QC, Chair, David Mossop, QC and Kenneth Walker

Reports issued: January 6, 2011 (2011 LSBC 01) and February 17, 2011 (2011 LSBC 05)

Counsel: Maureen Boyd for the Law Society and Bradley Darryl Tak on

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his own behalf (facts and determination); Maureen Boyd for the Law Society and Gordon Kehler for Bradley Darryl Tak (disciplinary action)

FACTS

Between May and July 2010, Bradley Darryl Tak failed to respond to numerous requests for information from the Law Society regarding a client complaint. He also did not reply promptly to a subsequent letter from the Law Society requesting a meeting to obtain explanations about certain files, records, accounts and other evidence.

Since the facts and determination phase of this proceeding, Tak was suspended from practice on December 7, 2010 for failure to file his trust report for 2009. That suspension came to an end on January 5, 2011 when he filed the report.

In the meantime, he ceased membership in the Law Society on January 1, 2011 for non-payment of fees. Pursuant to Law Society requirements, his practice was put into the hands of a locum. Tak intends to apply for reinstatement.

DETERMINATION

The panel found that Tak had committed professional misconduct by failing to comply with requests for information made by the Law Society in its regulatory capacity. Failure to respond is serious because of the vital public interest in maintaining the Law Society's ability to investigate complaints promptly and effectively.

Tak's misconduct was aggravated by the fact that, within the last year and a half, he had already been disciplined twice for failing to respond to the Law Society. He was under a 45-day suspension during many of the events in this case.

Tak's counsel submitted that his misconduct was not chronic, but situational, resulting from an accumulation of pressures in his personal life. The panel noted indications that he was taking steps to deal with his financial and organizational problems and the emotional difficulties that seemed to underlie them.

Two letters from lawyers who had knowledge of Tak's practice described him as a competent and hard-working lawyer. It was in his favour that he practised for about 17 years without any problems relating to his professional conduct. But that has to be considered against the string of largely interrelated disciplinary proceedings since July 2009.

DISCIPLINARY ACTION

Since Tak's pattern of misconduct persisted after a 45-day suspension was ordered for previous failures to respond, the panel determined that the disciplinary measure in this case must be a substantially longer suspension.

The panel ordered that Tak:

1. be suspended for four months; and
2. pay \$2,500 in costs.

DOUGLAS WARREN WELDER

Kelowna, BC

Called to the bar: May 12, 1981

Discipline hearing: March 3 and 4, 2010

Panel: Leon Getz, QC, Chair, Robert Brun, QC and Alan M. Ross

Bencher review: December 8, 2010

Benchers: David M. Renwick, QC (Chair), Haydn Acheson, Rita Andreone, Patricia Bond, David Crossin, QC, David Mossop, QC, Thelma O'Grady and Gregory Petrisor

Oral decision issued: March 4, 2010

Reports issued: March 24, 2010 (2010 LSBC 05) and February 18, 2011 (2011 LSBC 06)

Counsel: Maureen Boyd on behalf of the Law Society and Douglas Warren Welder on his own behalf (facts and verdict); Thomas R. Manson, QC on behalf of the Law Society and Douglas Warren Welder on his own behalf (review)

FACTS

On May 1, 2007 the Law Society began investigating a complaint about the alleged participation of Douglas Warren Welder in a fraudulent Ponzi scheme. Two days later, a class proceeding was commenced against Welder and another lawyer, alleging fraud, breach of trust and breach of fiduciary duty.

The Law Society sought confirmation of all trust and general accounts to which Welder was signatory during the period of investigation from April 2004 to November 2007. During the field investigation, Welder provided the Law Society with limited access to two trust accounts and one general account. The Law Society had reason to believe that he had other bank accounts for his law practice. Welder advised that he was not prepared to grant access to any other bank accounts.

The Law Society made further requests for information from Welder; some of those requests were answered and some were not. As a result, the Law Society issued a citation with a three-part allegation against Welder for:

- (a) not responding to the Law Society's December 8, 2008 letter requesting details of any bank accounts which hold or held trust or general funds for the period of investigation and not providing an explanation for continuing to deny the Law Society access to the records for those accounts;
- (b) not providing access to all trust and general bank account records; and
- (c) failure to respond to questions in the Law Society's letter of April 17, 2009.

DETERMINATION

Welder argued that the Law Society was seeking access to his private bank accounts. Throughout the investigation and audit, the Law Society was only interested in the banking records that pertained to his law practice. He also argued that, since he told the Law Society about his three bank accounts, there was nothing further he could tell them. This argument ignores his responsibility to respond to the Law Society's letters and to cooperate with the investigation.

Welder testified that during the relevant period he operated a total of three bank accounts relating to his practice. It was only during the course of the hearing that Welder provided this confirmatory evidence about his bank accounts, despite being given several opportunities to provide that information in writing to the Law Society.

The panel found that, if no other bank accounts existed, there was no evidence that Welder failed to provide details of the other accounts. The panel dismissed allegations (a) and (b) and found that Welder had committed professional misconduct in allegation (c).

The Discipline Committee initiated a Bencher review of the dismissal of allegation (a).

BENCHER REVIEW

The Benchers determined that the hearing panel asked itself the wrong question or embarked upon the wrong inquiry. In allegation (a), Welder was cited for not responding to a number of letters; he was not cited for failure to provide details about non-existent bank accounts.

There is an obligation on lawyers to reply promptly to any communication from the Law Society. During an investigation or audit, a lawyer may

be asked oral questions by Law Society staff. Later, the staff may ask the same or similar questions for clarification or to have a written record of the lawyer's answer. A lawyer who feels that the questions are repetitive or unnecessary, however, cannot ignore the questions as Welder did.

The Benchers concluded that allegation (a) was proven and amounted to professional misconduct. The matter was referred back to the hearing panel to consider submissions on the appropriate disciplinary action for allegations (a) and (c).❖

Credentials hearing

LAW SOCIETY RULE 2-69.1 provides for the publication of summaries of credentials hearing panel decisions on applications for enrolment in articles, call and admission and reinstatement.

For the full text of hearing panel decisions, visit the Regulation & Insurance/Regulatory Hearings section of the Law Society website.

RANDEEP SINGH SARAI

Vancouver, BC

Called to the bar: May 22, 2002

Ceased membership: January 1, 2006

Hearing (application for reinstatement): August 25, 2010

Panel: Kathryn Berge, QC, Chair, Stacy Kuiack and Herman Van Ommen

Report issued: December 16, 2010 (2010 LSBC 26)

Counsel: Jason Twa for the Law Society and Randeep Singh Sarai appearing on his own behalf

In May 2002, directly after his call to the bar, Randeep Singh Sarai joined a lawyer in partnership and was primarily responsible for the real estate component of their practice.

The law firm ceased its business operations as a partnership in April 2003. Sarai's partner did not contribute to the accumulated losses and debts of the firm. Sarai took full responsibility for the debts of the firm and ensured that there were no unpaid creditors.

Between 2002 and 2005, Sarai breached multiple undertakings on real estate files and allowed multiple other errors to be made in trust accounting and the general handling of his practice. In a decision issued on May 9, 2005 (2005 LSBC 17), he was found to have committed professional misconduct and was suspended for one year.

Pending the 2005 disciplinary hearing, Sarai was allowed to continue practising subject to having a practice supervisor oversee his work. Contrary to the terms of this agreement, he failed to provide files to his practice supervisor.

Sarai allowed his membership in the Law Society to lapse at the end of 2005, and has now applied for reinstatement. He currently works in the private sector and instructs counsel on matters including foreclosures and various insolvency and restructuring applications. He has observed first-hand the standards to which proper counsel adhere, which has enabled him to gain a better understanding of competent real estate and

general legal practice.

Part of Sarai's justification for the lack of attention to his files early in his practice was his father's health crisis and subsequent death. Also, as a new lawyer, he had received no training in real estate conveyancing or the proper use of a trust account.

Sarai readily admitted that, at the time of his 2005 suspension, he was not fit to be a barrister and a solicitor of the Supreme Court as he did not have the skills, training and maturity to meet the standards of practice. The panel accepted that the complete failure of his real estate practice resulted from his engagement in a type of practice for which he was unsuited and untrained. It did not arise from an inability or unwillingness to perform to the standards expected of lawyers.

A matter of particular concern to the panel was that he continued to breach undertakings and mishandle files while he was under practice supervision. Sarai testified that he did not receive instruction or supervision on the proper reorganization and administration of his practice so as to prevent the errors being made in the first place.

The panel reviewed letters of reference submitted in support of his character and repute. His community volunteer work remains significant; however, in the years since his suspension, he has reduced his volunteer commitments to devote himself to his growing family and to his career.

After reviewing the evidence, the panel found Sarai to be credible, honest in his dealings with others, including clients and third parties, and possessing a good reputation in the community. The panel was satisfied that, as a result of added maturity and the experience in his new job with able solicitors, he could now perform to the standards required of all lawyers and not repeat his past failings.

The panel found that Sarai had met the burden of proof of establishing his good character, repute and his fitness to be a barrister and a solicitor of the Supreme Court. The panel ordered that Sarai be reinstated on the condition that he:

1. pass Law Society requalification exams and complete practice management courses;
2. only practise in a firm of four or more lawyers or otherwise in a practice situation approved by the Law Society;
3. not engage in practice involving mortgages, conveyancing, subdivision and other work of a similar nature until the Law Society is satisfied that he has obtained the proper training and knowledge to do so; and
4. pay \$2,900 in costs.❖

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