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Keeping BC lawyers informed

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Lawyers and leadership

by Jan Lindsay, QC

BENCHERS' BULLETIN

The *Benchers' Bulletin* and related newsletters are published by the Law Society of British Columbia to update BC lawyers, articulated students and the public on policy and regulatory decisions of the Benchers, on committee and task force work and on Law Society programs and activities. BC lawyers are responsible for reading these publications to ensure they are aware of current standards, policies and guidelines.

Suggestions on improvements to the *Bulletin* are always welcome — contact the editor at communications@lsbc.org.

Electronic subscriptions to the *Benchers' Bulletin*, *Insurance Issues* and *Member's Manual* amendments are provided at no cost. Print subscriptions may be ordered for \$70 per year (\$30 for the newsletters only; \$40 for the *Member's Manual* amendments only) by contacting the subscriptions assistant at communications@lsbc.org.

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I HAD THE opportunity to attend the welcoming session for first-year law students at the University of Victoria in September. It was the first time a female president of the Law Society has addressed her daughter entering law school, and I was honoured to be there. I listened to Dean Webber speak to his new students for the first time. He was congratulatory and inspiring. His message touched on many things, but what resonated with me was his description of law as the translation between our grandest thoughts and ideals and how we realize those values in our day-to-day life.

Like the dean, I was a political science student and was always interested in the lofty ideas of the great thinkers and writers and their discourse on democracy, autocracy, personal freedom and the “social contract.” The “social contract” is our agreement with society to give up certain freedoms and, in turn, to rely on the security, protection and predictability that ordered society brings. We use the law to create our rules around institutions and behaviour, and to maintain a balance between personal freedom and state authority.

The law provides the basis for how we conduct ourselves, and the behaviour we can expect of others. The law allows us to change our expectations and, ultimately, our social order. The law is not always right, and history is full of examples of bad laws, but we continue to strive for better laws that will better reflect how we want to organize our affairs.

Lawyers are well suited to take on leadership positions in the law-making process. Legislators ask government staff lawyers to draft the legislation that will be enacted to change the law in one way or another. Lawyers are advocates and counsel on cases that change the way we interpret laws and previous decisions, and lawyers advise clients and the public about the law and how their affairs can be conducted to accord with the law. Lawyers

become judges, who ultimately decide what the written law means and how it applies on a case-by-case basis.

I am proud to be a lawyer, for all these reasons, but especially for the leadership opportunities it brings. As lawyers we hold a respected place in society. We have credibility with the public. And even though we, as lawyers, do not all agree on any given issue, we have the ability to determine disputes in a peaceful, fair and respectful way. We help to keep the “social contract” between all the moving parts.

And I am proud to be president of the Law Society for 2014. Many have commented on what an interesting and challenging year it has been. That is so, but I am pleased with the way we have continued to show leadership on issues that are difficult to resolve. We have engaged in a thorough, thoughtful, open and transparent process in which we have attempted to apply the law, and to comply with the rules that govern our Society and our processes. Our rules provide for member input, and we are now asking for that, in a very formal way, by referendum. I hope that lawyers will continue to show leadership on this issue, and will participate in this very important decision. I hope that our members will carefully consider all aspects of the issue, and consider the rights and freedoms of all people.

The Law Society has also started to chart the course for the next few years. This includes developing our strategic plan for 2015-17. Predictably, we have put the public's access to legal services as a key priority. We will continue to work with all stakeholders to provide options and opportunity for the public to access the justice system and to have access to good, competent legal services, in a timely and cost-effective way. Again, we want to be leaders on this issue, as we work with others to improve our justice system and how our laws come to reflect our most noble and lofty ideas. ❖



Referendum called on Trinity Western University's proposed law school

ON SEPTEMBER 26, the Benchers passed a motion to conduct a referendum of all BC lawyers regarding the proposed law school at Trinity Western University. The motion will allow for all members of the Society to vote on the resolution adopted at the special general meeting this past June in which the Benchers were directed to declare that the proposed law school at Trinity Western University is not an approved faculty of law

for the purpose of the Law Society's admission program.

The motion further states that the resolution will be binding and will be implemented by the Benchers if at least one-third of all members of the Society in good standing vote in the referendum, and two-thirds of those participating vote in favour of the resolution.

To be counted, ballots must be

received at the Law Society office by 5 pm on October 29, 2014. The referendum votes will be counted on October 30; results will be published on the website later that day.

Ballots will be mailed to members by October 8. If you have not received a ballot by October 15, or if you have any questions about the referendum, please email us at referendum@lsbc.org. ❖

John Hunter, QC to receive 2014 Law Society Award



THE BENCHERS HAVE chosen John Hunter, QC to receive the 2014 Law Society Award. The award is offered every two years to honour the lifetime contributions of the truly exceptional within the

profession and the legal community, based on integrity, professional achievements, service and law reform.

The award, a bronze statue of Sir Matthew Ballie Begbie, will be presented to Hunter at the Bench & Bar dinner on November 6, 2014; for more information on the event, see the [Calendar](#) on the Law Society website.

Hunter was called to the bar in 1977, and is currently senior litigation counsel at

Hunter Litigation Chambers in Vancouver. He is a leading practitioner in corporate-commercial litigation and is frequently called upon as an arbitrator in commercial disputes.

Elected a Bencher in 2002, Hunter was President of the Law Society in 2008. Hunter has also served as a representative and President of the Federation of Law Societies of Canada, chairing the Federation's Task Force on the Canadian Common Law Degree. The task force's 2009 report strengthened the rules for new criteria and provided a successful method of implementation across Canada.

Those nominating him for the award commended Hunter as a leader in the bar and a role model to the profession – a man of intellect and integrity, who is unquestioned and admired by his peers.

Hunter is recognized nationally and internationally as one of Canada's leading

counsel; his 2013 amicus curiae appointment by the Supreme Court in the Senate Reform Reference recently argued before that court demonstrates the confidence the top court holds in him.

His dedication to service is evident in his exceptional volunteer contributions and pro bono work. In addition to teaching at the law schools, Hunter has written and spoken on many topics as part of his commitment to continuing legal education, especially in the area of legal ethics. ❖

The Bench & Bar dinner will be held on November 6 at the Westin Bayshore Hotel in Vancouver, where the Law Society Award and the CBA's Georges A. Goyer, QC Memorial Award will be presented. For more information, see the [Calendar](#) on the Law Society website.

Benchers approve 2015 fees

THE BENCHERS HAVE approved the 2015 practice fee and insurance fee, as recommended by the Finance and Audit Committee. The committee based its recommendation on a thorough review of the Law Society's financial position, its

statutory mandate and strategic plan.

The total annual mandatory fee for practising, insured lawyers for 2015 will be \$3,742, a 1.4% increase over 2014. The practice fee will increase by \$52 to \$1,992 and the insurance assessment will remain

the same at \$1,750.

More information and a detailed breakdown and explanation of the 2015 fee are available on the website (Publications > [Notices to the Profession](#)). ❖



Aboriginal mentorship program, a made-in-BC answer

by Timothy E. McGee, QC

THE RECENT DECISION by the Supreme Court of Canada that granted title to more than 1,700 square kilometres of land in British Columbia to the Tsilhqot'in First Nation speaks to the complex and multi-faceted nature of Canadian jurisprudence. It is an example of how Canadian law must co-exist and be balanced with Aboriginal law, and that both legal systems should be properly implemented in this country.

Many Indigenous people come from communities where Aboriginal laws are still followed and practised. They know these laws intimately because they have lived them. So, in an inter-societal legal system, who better to explain and help people better understand Aboriginal law than Aboriginal people?

This is just one of the many important reasons why increasing diversity in the

legal profession is a clear benefit. When different perspectives are brought to the table, conversations about the law become more fruitful – arguments, and ultimately decisions, are made by people who are more informed.

The Law Society recognizes this advantage, and it is why the Aboriginal Lawyers Mentorship Program exists in order to retain and advance Aboriginal lawyers in BC, who are currently under-represented. The Program matches senior counsel with junior Aboriginal lawyers for a mentoring relationship.

For this month's *Bulletin*, we celebrate the start of the Program's second cycle. The Program's inaugural launch was on National Aboriginal Day in 2013, and since then, it has been wonderfully successful, matching 20 mentor-mentee pairs. It is a

made-in-BC answer to calls for improving access to justice, because we know it is in the public's best interests that lawyers reflect who they serve.

As lawyers, many of us become occupied with our own careers; throw family and a myriad of other obligations into the mix, and we can become very busy people. However, if you have the time, I encourage you to consider the mutual benefit of providing guidance and support for junior lawyers, whether through this program or outside of it. You will read in the feature story of the benefits to both mentor and mentee.

To participate in the Aboriginal Lawyers Mentorship Program, please contact Andrea Hilland, Law Society staff lawyer, at ahilland@lsbc.org or 604.443.5727. ❖

Aboriginal Lawyers Mentorship Program meet and greet

It was an evening filled with good food, laughs and bonding, as dozens of lawyers came together to greet old friends, and make new ones, too. The Aboriginal Lawyers Mentorship Program launched its second cycle in September with a "meet and greet" reception hosted by Mandel Pinder LLP in downtown Vancouver. The event provided an opportunity for junior Aboriginal lawyers to network with their senior counterparts for a mentor-mentee relationship. Law Society staff lawyer Andrea Hilland, who oversees the program, says the evening was a success with four mentorship pairs matched that evening.

For more information on becoming a mentor or a mentee, visit the Law Society website or email ahilland@lsbc.org. ❖





Gold medal presentations

Each year the Law Society awards gold medals to the graduating law students from the University of Victoria, University of BC and, for the first time, Thompson Rivers University who have achieved the highest cumulative grade point average over their respective three-year programs.

In 2014, gold medals were presented to Lisa Grantham of UVic (left photo, with Bencher Pinder Cheema, QC (left) and Dean Jeremy Webber), Shawn Erker of UBC (right photo, with Law Society President Jan Lindsay, QC) and Taylor-Marie Young of TRU (photo unavailable).

Unauthorized practice of law

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

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

From February 13 to September 3, 2014, the Law Society obtained undertakings from 13 individuals and businesses not to engage in the practice of law.

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

- **Ravinder P. Randhawa**, a.k.a. **Ravinder Bains** and **Ravinderpal Randhawa**, held herself out as a lawyer and provided

various legal services for a fee, including giving legal advice and preparing divorce documents. Randhawa and her company, **Randhawa Immigration Services Ltd.**, consented to an injunction permanently prohibiting Randhawa from holding herself out as a lawyer and prohibiting them from engaging in the practice of law for or in the expectation of a fee. (July 29, 2014)

- **Francisco MacDugall**, of Vancouver, held himself out as a "private attorney" entitled to engage in the practice of law and provided various legal services to others for a fee. MacDugall appeared in court as an advocate, gave legal advice and prepared various documents resembling what the courts have described as "organized pseudo-legal commercial arguments." Madam Justice Watchuk granted the Law Society an injunction permanently prohibiting MacDugall from engaging in the practice of law and from falsely representing himself as a lawyer, articulated student or in any other manner that connotes he is authorized

to practise law. The court also awarded the Law Society its costs. (September 9, 2014)

- **John Karlsson**, a former lawyer of Youbou, BC, consented to an order permanently prohibiting him from representing himself as a lawyer or from engaging in the practice of law as defined in section 1 of the *Legal Profession Act*. (September 18, 2014)
- **Bradley Jonathan Renford**, a.k.a. **Kim Elton Horne**, d.b.a. **Concise Paralegal Services**, of Burnaby, drafted legal documents and provided legal advice for a fee in a family law proceeding. On October 6, 2014, Madam Justice Koenigsberg granted an injunction permanently prohibiting Renford from engaging in the practice of law, including preparing documents to be used in court proceedings or under statute, giving legal advice, offering legal services and from representing himself as qualified or entitled to engaging in the practice of law. The court granted the Law Society its costs. (October 6, 2014) ❖

Annual general meeting

Van Ommen is acclaimed as Second Vice-President-elect; member resolution passes



THREE HUNDRED TWELVE lawyers and 11 students attended at the 14 locations established for the Annual General Meeting on September 30.

Herman Van Ommen, QC was acclaimed as the Second Vice-President-elect. In nominating him, Bencher Nancy

Merrill referred to Van Ommen as a “gifted leader,” and in seconding the motion, current Second Vice-President David Crossin, QC said Van Ommen “always conducts himself with good faith, civility and the utmost integrity.” Van Ommen will begin his term as Second Vice-President on January 1, 2015.

The member resolution before the meeting passed by a vote of 188 to 48. The resolution directs the Law Society to require all legal education programs recognized by the Law Society for admission to the bar to provide equal opportunity without discrimination. The Benchers will consider the result of the vote at an upcoming meeting. ❖

In Brief

REMINDER: SURVEY ON LEGAL SERVICES IN BC

As reported in *E-Brief*, the Legal Services Regulatory Framework Task Force is conducting surveys of the public, lawyers and legal service providers to study the legal needs in the community, and whether those needs are being met. The focus of the work is to improve access to legal services, particularly in low to middle-income brackets.

The deadline to complete the survey is **October 31, 2014**. For more information or to access the survey, follow the links in the [highlight](#) on the website.

JUDICIAL APPOINTMENT

Sandra Harper, a lawyer with Harper and Company in Victoria, was appointed a master of the Supreme Court of BC (Vancouver). ❖



NEWS FROM THE LAW FOUNDATION

Law Foundation grants – a statistical overview

IN SPITE OF financial challenges caused by ongoing low interest rates, the Law Foundation continues to fund 88 continuing and on-track programs and 26 projects that contribute significantly to improving access to justice in BC.

The statistical highlights of the Law Foundation’s accomplishments in 2013 include:

- over 89,000 people received legal information, advice, summary service or representation from foundation-funded advocates or lawyers, in all regions of the province;
- over 100 public interest cases or regulatory hearings were completed;
- over 550 law students were supported;
- 126 publications were created by programs and made available online and in print (with over 126,000 hard copies of legal education resources being distributed);
- significant law reform and research work was done;
- the 30 law libraries continued to serve the profession and the public, answering over 21,000 information requests from the public and over 26,000 from the profession, and serving over 19,000 users via public access computers;
- 46 lawyers and 72 advocates were funded in various full and part-time positions.

GRADUATE FELLOWSHIPS

The Law Foundation will issue up to six graduate fellowship awards of \$15,000 for the 2015-2016 academic year. Applicants must be residents of British Columbia; graduates of a BC law school; or members of the BC Bar who are in full-time graduate studies in law or a law-related area.

All applications and supporting material must be received at the Law Foundation offices by **January 7, 2015**. For more information about the fellowships and the application process please refer to the Law Foundation website at lawfoundationbc.org (under Funding Available > [Graduate Fellowships](#)). ❖



The Law Society sponsored an Aboriginal Lawyers Mentorship Program meet and greet in September (see page 5 for more on the event). Several mentees from the first year of the program attended, including (left to right), Nathaniel Lyman, Steven Carey, Mary Mollineaux, Keith Brown and Kris Statnyk.

The Aboriginal Lawyers Mentorship Program: how it helps increase access

THIS PAST SUMMER, Joanna Recalma was faced with a difficult decision.

The lawyer and mother had been working at a small firm in Nanaimo and, after remaining with that firm for her first year of practice, she was considering making the jump into solo practice.

"It was nerve-racking," Recalma said. "I was examining what I was earning from the fee share, and the hours I was working,

and although I was grateful for my experience and articles, I thought perhaps it was best I try practising on my own."

The University of Victoria law school graduate is originally from the Qualicum (Pentlatch Nation) and Alert Bay ('Namgis Nation) and signed on to become a mentee when the Aboriginal Lawyers Mentorship Program began in 2013. While she was armed with tenacious grit and a law

degree, Recalma also had a lot of questions about practising alone. Before making her decision, she sought advice from the mentor she had met through the program. Recalma had been paired with a senior lawyer from Victoria.

"My mentor was able to meet me at the last minute, he was so flexible. He was so generous and giving of his time on an unpredictable schedule," she said. "He



Andrea Hilland, Staff Lawyer, Policy & Legal Services

made my choice into solo practice much easier.”

As expected, the first month of her venture met with some challenges, but now in her fourth month on her own, Recalma is busy with her practice. In fact, she is so busy that, for the moment, she is not accepting new clients.

Recalma’s successful transition into solo practice demonstrates how the Aboriginal Lawyers Mentorship Program helps junior Aboriginal lawyers in their careers. The program is administered by the Law Society, with help from the Canadian Bar Association, and pairs junior Aboriginal lawyers with senior lawyers for a mentor-mentee relationship.

The program recently launched its second cycle after a tremendously successful first year.

“We had a goal to match 20 pairs, and we met that goal,” Andrea Hilland said. Hilland is the Law Society staff lawyer who oversees the program. “We also had 17 additional senior lawyers who were on a wait list to become mentors.”

The program is open to junior lawyers and law students with Aboriginal ancestry who wish to be mentees. While mentors do not need to be of Aboriginal ancestry, they are asked to have an understanding of issues related to the retention of Aboriginal lawyers in British Columbia.

Once a mentor and mentee are matched, they remain in contact through phone calls, in-person meetings or electronically – giving the junior lawyer the opportunity to receive career advice from someone who is more experienced.

“Junior lawyers want to know what the ins and outs of the business part of

practising law are and how to work through that,” Hilland said. “A lot of that is not necessarily obvious ... there’s no how-to guide on it.”

The ultimate goal of the program is to retain and advance Aboriginal lawyers who are currently underrepresented in the legal profession in BC. According to the 2012 Law Society report, *Towards a more representative legal profession: better practices, better workplaces, better results*, only 160

lawyers — or 1.5 per cent of the profession — are of Aboriginal descent, while First Nations people represent 4.6 per cent of BC’s population.

Hilland cites several factors contributing to the underrepresentation of Aboriginal lawyers, such as socio-economic issues, and a desire for many of Aboriginal ancestry to stay in their communities, preventing them from pursuing a legal education.

“Another reason is a distrust of the Canadian legal system,” Hilland said. “It’s a lot of effort to become a lawyer, and a lot of times it’s difficult for many to get that far because they’re disillusioned by the Canadian legal system, so they don’t want to study it.”



Joanna Recalma

However, the training, retention and advancement of Aboriginal lawyers contribute to the strength of the legal profession, particularly in the area of Aboriginal law, according to lawyer and mentor Cheryl Sharvit.

“Aboriginal law is supposed to be inter-societal law. It’s supposed to reflect

Indigenous laws and legal systems,” said Sharvit, who has been practising Aboriginal law for 15 years. “Indigenous people with a foot in both worlds are the best people to explain [Indigenous law] to our judges and to ensure the proper implementation and operation of both legal systems in Canada.”

Tina Dion, a lawyer of Aboriginal ancestry and a mentor in the program, goes even further when speaking about the benefits of retaining Aboriginal lawyers.

“Canadian law is for all of us, but there are some unique aspects of our laws that apply directly and specifically in connection with Aboriginal peoples. I am not just referring to the large basket of ‘Aboriginal law,’ constitutional rights-based issues, but to other areas of law as well, such as criminal, family, administrative, elder, child welfare, and so on, that also require the Aboriginal perspective,” Dion said.

“Through the development of these areas of the law – which are always dynamic – lawyers who bring that unique perspective can only enhance the development of these laws, and our profession. It is also imperative, though, that Aboriginal lawyers be supported in practising in broad areas and not just those areas that touch on ‘Aboriginality,’ because with broader practice and participation, comes the potential increase in the number of Aboriginal judges at all levels, which will begin to address that current underrepresentation.”

It is the under-representation of Aboriginal lawyers that could be discouraging Aboriginal people from seeking legal advice and services when facing legal issues.

“People want somebody who knows the issues personally,” Hilland said. “Somebody who is coming from a similar community background might have that context so that the client doesn’t have to explain everything. They might anticipate that somebody from a similar background might have more empathy for their situation.”

The Law Society believes increasing diversity within the legal profession is part of improving access because the public is best served when members of the profession reflect the communities that they represent.

Recalma agrees. As a family and child protection lawyer, she says her Aboriginal clients are more at ease when they learn

she shares a similar background.

"There's an immediate relaxing," Recalma said. "When I first meet an Indigenous client, I ask, 'Where are you from?' Our identity is very much connected to where we're from. When they learn where I am from there is just a moment of recognition that we have a common, or shared history."

"One stereotype is that Indigenous people are silent, or that we don't express ourselves well because we do not understand an issue. Well, that's not the case. We are articulate and have a clear understanding of our own situations and certainly strong opinions on how best to move forward. Although I agree that there can sometimes be a hesitance when expressing opinions while navigating the justice system, I believe that hesitance is rooted in a lack of trust with an institution that's generally been used as a tool against us."

Hilland hopes the program can help

increase the number of Aboriginal lawyers in the province, thereby serving smaller communities outside the Metro Vancouver

"Canadian law is for all of us, but there are some unique aspects of our laws that apply directly and specifically in connection with Aboriginal peoples. I am not just referring to the large basket of 'Aboriginal law,' constitutional rights-based issues, but to other areas of law as well, such as criminal, family, administrative, elder, child welfare, and so on, that also require the Aboriginal perspective."

—Tina Dion

where there is a greater proportion of Indigenous populations.

"A lot of Aboriginal lawyers from

smaller communities feel connected to communities and generally feel inclined to work there," Hilland said. "Aboriginal lawyers have a propensity to serve Aboriginal people."

And, while the Aboriginal Lawyers Mentorship Program provides an obvious benefit to Aboriginal lawyers and Aboriginal people in the province, the mentors have found that fostering junior lawyers by providing cultural or career guidance can be extremely rewarding.

"If offering my time, experience and advice will assist an Aboriginal student or new call get into, and not only remain, but advance within the profession, then I am happy to do so because their participation enhances the diversity necessary in our profession," Dion said.

"Ultimately, it is about feeling like we belong in this profession – because we do." ❖



Some of the mentors who participated in the first year of the program (left to right): Andrea Hilland, Anja Brown, Cheryl Sharvit, Tina Dion and Maria Morellato, QC.

PRACTICE TIPS, by Dave Bilinsky, Practice Management Advisor

Making your e-communications secure

♪ *Everyone has secrets
Don't tell anyone ...* ♪

Lyrics by Kim Eana, recorded by Kpop

THESE DAYS, WITH the Snowden revelations and news of continual large-scale surveillance of the internet by the “Five Eyes” (USA, Britain, Canada, Australia and New Zealand), there is increasing interest in how to protect solicitor-client communications. Solo and smaller firms are now inquiring about how they can send and receive secure emails and documents with their clients, as they are concerned about the perceived lack of privacy when using traditional email. There is the increasing realization that ordinary email may not be a great way to communicate with your clients.

Wikipedia states:

After 180 days in the U.S., email messages stored on a server lose their status as a protected communication under the *Electronic Communications Privacy Act*, and become just another database record. After this time has passed, a government agency needs only a subpoena — instead of a warrant — in order to access email from a provider. Other countries may even lack this basic protection, and Google’s databases are distributed all over the world.

But there are other reasons for sending secure communications, aside from concern that governments may be reading our emails. All of us, at one time or another, have sent an email to the wrong person. If the communication is sensitive but not secured, then the wrong recipient can read the contents (and attachments) and could forward them on to others. If the communication intended for your client was instead sent to opposing counsel, you can see how this could create ethical and legal problems for you and your client. If the communication (and attachments) are encrypted, however, the substance of the message is still secure.

Further, you or your clients may be

targeted. In “[Hackers linked to China sought Potash deal details: consultant](#),” the *Globe and Mail* reported:

At least seven law firms were targeted in attacks that Daniel Tobok, president of Toronto-based Digital Wyzdom Inc., believes are also linked to hacking that paralyzed federal government computer systems last year.

Most of these attacks were decoys, he



said, meant to distract anyone tracing the activity from what he believes was the hackers’ real goal: Getting information about BHP Billiton Ltd.’s ultimately unsuccessful \$38-billion bid for Potash Corp. in 2010.

There are several ways you can make your communications more secure and protected from spying eyes of all types.

Person-to-person: This is decidedly not high-tech, but if you deliver an encrypted flash drive or CD directly to your client, then you have totally avoided the risks of transferring information over the internet. Using an encrypted flash drive or CD ensures that, if the device is lost or stolen in transit or from your office or the client’s, the information is still secure, assuming you used a strong encryption method. Of course, the password or phrase to decrypt the document would have to be exchanged with your client (and not by email or a similarly insecure method!).

However, while this method is high on the security and privacy scale, it is not terribly convenient.

Encrypted communication using ordinary email: You can use ordinary email to deliver a fully encrypted document as an attachment. The email need only say “Please see attached.” Again, the password or phrase to decrypt the document must be exchanged securely with your client.

Encryption security is only as strong as the password protection in your application. Newer software, such as Adobe Acrobat version XI, is better than older versions. However, your best efforts can be defeated if you use a weak password that can be hacked by any number of freely available password cracking programs. A quick Google search, for example, will turn up a host of password-cracking applications — some of which may install malware on your computer in addition to the cracking software.

The convenience of using this method is somewhat tempered by the fact that, while the attachment is encrypted, the email itself is not and the email metadata can be sniffed (revealing the sender and the recipient, the time of sending, and more). Some experts claim that much information can be gleaned just by noting the volume of email sent between parties. An increase in the level of email, for example, could indicate something important is going on.

Individual encrypted email: Here, both parties use a commercial encryption application to encrypt and decrypt a message and any attachments. This is typically combined with attaching a digital signature to the email. According to Wikipedia:

A digital signature is a mathematical scheme for demonstrating the authenticity of a digital message or document. A valid digital signature gives a recipient reason to believe that the message was created by a known sender, such that the sender cannot deny having sent the message (authentication and non-repudiation)

and that the message was not altered in transit (integrity). Digital signatures are commonly used for software distribution, financial transactions, and in other cases where it is important to detect forgery or tampering.

Encryption combined with a digital signature assures the recipient that the communication was not altered and was sent by the right person.

A good encryption program can be difficult and cumbersome to use, and both you and your client need to have the system in order for this to work. There are systems that allow you to send an encrypted message without the client having the same program installed, but the client usually cannot respond with their own encrypted message.

Some firms have installed a specific device on their network that encrypts all email without the user's intervention, such as an encryption management server, and forces security compliance. It also manages and stores the keys used to encrypt and decrypt messages, making the user's experience that much easier. This would require that all important buy-in from your clients (not to mention your staff as well).

Third-party secure services: There are service providers that allow for the secure transfer of information. However, security expert Bruce Schneier warns [in his blog](#) that the NSA is actively trying to penetrate and break these services.

The notorious Edward Snowden purportedly used Lavabit, a secure email service that was designed to protect users' privacy. However, the US government served the company with a court order to turn over the private SSL key that would allow it to read all the emails on the service. Lavabit complied, but then closed soon after, citing an inability to safeguard customers' privacy. At least one other secure email service company was also reported to have closed, to avoid being caught in a similar situation.

Other companies still offer [secure email services](#), but there is always the risk that they, too, will close and your communications may be lost.

Wi-fi and mobile computing risks: For very good reason, most organizations have a policy that confidential information is not to be transferred through any public

(i.e., unsecured) wi-fi network.

Kapersky Lab, the internet security company, states:

In a recent survey, 70% of tablet owners and 53% of smartphone / mobile phone owners stated that they use public Wi-Fi hotspots. However, because data sent through public Wi-Fi can easily be intercepted, many mobile device and laptop users are risking the security of their personal information, digital identity, and money. Furthermore, if their device or computer is not protected by an effective security and anti-malware product ... the risks are even greater.

Risks of public wi-fi are identified in "[6 wireless threats to your business](#)," an article published on Microsoft.com. Also, in "[Convenience or security: you can't have both when it comes to Wi-Fi](#)," TechRepublic warns about the Wi-Fi Pineapple device, which captures passwords and other sign-on credentials when people use public wi-fi.

In my view, this is enough evidence that every workplace should prohibit the exchange of client or other work-related communications via unsecured public wi-fi.

Secure client portals: Another alternative to email is to use a secure client portal. A portal is a private webpage that provides access to authenticated and authorized users only via a browser to digital files, calendars and other information. The advantage of a secure client portal is that nothing travels along the email backbone of the internet; all communications take place within the portal.

Wikipedia has this to say about lawyers and secure client portals:

Due to the nature of the industry, law firms make up a significant amount of client portal users. This is because lawyers are constantly collaborating and interacting with clients, involving a significant amount of paperwork. In these cases the file sharing functionality is imperative.

Conclusions: It is a matter of judgment as to the appropriate level of security to place around solicitor-client communications, knowing that ordinary email is not very secure at all. After all, everyone has secrets ... ❖

Services for lawyers

Practice and ethics advisors

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

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

Call Barbara about client identification and verification, scams, client relationships and lawyer/lawyer relationships.

Contact Barbara at: tel: 604.697.5816 or 1.800.903.5300 email: bbuchanan@lsbc.org.

Contact Lenore at: tel: 604.697.5811 or 1.800.903.5300 email: lrowntree@lsbc.org.

Contact Warren at: tel: 604.697.5857 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.



Optum Health Services (Canada) Ltd. – Confidential counselling and referral services by professional counsellors on a wide range of personal, family and work-related concerns. Services are funded by, but completely independent of, the Law Society and provided at no cost to individual BC lawyers and articled students and their immediate families. tel: 604.431.8200 or 1.800.663.9099.



Lawyers Assistance Program (LAP) – Confidential peer support, counselling, referrals and interventions for lawyers, their families, support staff and articled students suffering from alcohol or chemical dependencies, stress, depression or other personal problems. Based on the concept of "lawyers helping lawyers," LAP's services are funded by, but completely independent of, the Law Society and provided at no additional cost to lawyers. tel: 604.685.2171 or 1.888.685.2171.



Equity Ombudsperson – Confidential assistance with the resolution of harassment and discrimination concerns of lawyers, articled students, articling applicants and staff in law firms or other legal workplaces. Contact Equity Ombudsperson, **Anne Bhanu Chopra**: tel: 604.687.2344 email: achopra1@novuscom.net.

Ethics Committee opinions

THE ETHICS COMMITTEE has approved these opinions for publication as guidance for the profession.

ADVANCING FUNDS TO A CLIENT TO COVER THE COST OF DISBURSEMENTS, MEDICAL EXPENSES OR LIVING EXPENSES

It is common practice for lawyers to pay the cost of client disbursements, particularly when clients are unable to afford them and the lawyer expects the funds to be recovered when the case is resolved. This practice is not contrary to the rules, and some court decisions have approved it: see *Franzman v. Munro* 2013 BCSC 1758 and *Chandi v. Atwell* 2013 BCSC 830 (currently on appeal). Less common, but a not infrequent practice, is when a client's financial situation compels a lawyer to advance funds to pay for the client's medical treatment or living expenses.

The *BC Code* has a number of provisions that restrict and regulate the circumstances under which lawyers can advance funds to clients. The following summary is intended to assist lawyers to stay within the rules.

When a lawyer pays the client's disbursements and charges interest on those costs, the lawyer must:

- disclose the charge in writing in a timely fashion (rule 3.6-1);
- ensure the charge is fair and reasonable (rule 3.6-1); and
- ensure the client consents to the charge (rule 3.6-1).

When a lawyer advances funds to a client to cover expenses other than disbursements (such as medical costs and living expenses), and charges interest on those costs, the lawyer must:

- disclose the charge in writing in a timely fashion (rule 3.6-1);
- ensure the charge is fair and reasonable (rule 3.6-1);
- ensure the client consents to the charge after receiving independent legal advice (rule 3.4-28); and
- be in compliance with *BC Code* rule 3.4-26.1, which prevents a lawyer from advancing funds to a client if there is a

substantial risk that the lawyer's loyalty to or representation of the client would be materially and adversely affected by the lawyer's relationship with the client or interest in the client or the subject matter of the legal services. In practical terms, this means that a lawyer may not advance funds to a client if the advance would reasonably be expected to affect the lawyer's professional judgment. Depending on such matters as the size of the loan, the strength of the client's case, the client's chances of repaying the loan if the case fails and the lawyer's own financial circumstances, the loan may cause the lawyer to prefer his or her own interest in being reimbursed to that of the client's cause.

Lawyers who have questions about how these standards affect their practices may discuss the issue with a Law Society practice advisor or ask the Ethics Committee for guidance in a particular case.

JOINT RETAINER BY POLICE OFFICERS UNDER INVESTIGATION

In response to Commissions of Inquiry into police-related deaths, the BC Legislature established the Independent Investigations Office (IIO) to investigate incidents of death or serious harm involving police officers and special provincial constables in the province. The IIO opened in September 2012. Part 7.1 of the *BC Police Act* requires the IIO to investigate "incidents" in which police may have caused death or serious harm, including, but not limited to, criminal activity by the police.

All provincial police agencies have entered into a Memorandum of Understanding (MOU) with the IIO to enable the IIO to coordinate its investigations into police incidents. Section 15 of the MOU provides:

15.1 To prevent contamination of evidence, officers involved in or present during an incident which may fall within the jurisdiction of the IIO shall not communicate their accounts or recollections of the incident directly or indirectly to anyone other than an IIO investigator, except for communication that is

necessary for:

- (a) public safety and obtaining medical care for injured persons;
- (b) the securing or identification of evidence;
- (c) the furtherance of concurrent investigations;
- (d) obtaining advice from legal counsel or a police association representative;
- (e) obtaining health care for an officer; or
- (f) any other purpose that is agreed upon by the IIO investigator and the police service liaison officer.

BC Code rules 3.4-5 to 3.4-9, which cover joint retainers, require that, before a lawyer is retained by more than one client in a matter or transaction, the lawyer must advise each of the clients that:

- (a) the lawyer has been asked to act for both or all of them;

The committee has concluded that, as a general rule, a lawyer should not jointly advise or represent two or more police officers under investigation for, or witnesses to, a serious incident that arose in the course of their duties.

- (b) no information received in connection with the matter from one client can be treated as confidential so far as any of the others are concerned; and
- (c) if a conflict develops that cannot be resolved, the lawyer cannot continue to act for both or all of them and may have to withdraw completely.

The IIO has asked the Ethics Committee whether a lawyer may jointly advise or represent two or more police officers who are under investigation for, or witnesses to, a serious incident that arose in the course of their duties.

The committee is of the view that the MOU would place a lawyer retained to act for more than one police officer

with respect to the same investigation by the IIO in a conflict. That lawyer would be bound by the joint retainer rules to share information received from one police officer client with another police officer client. However, the lawyer would be prevented from doing so by Section 15.1 of the MOU, which requires that officers not indirectly communicate with each other concerning their involvement in the incident. The committee has concluded that, as a general rule, a lawyer should not jointly advise or represent two or more police officers under investigation for, or witnesses to, a serious incident that arose in the course of their duties.

The Law Society of Upper Canada has

reached a similar conclusion, although the basis of that conclusion is a regulation made under the Ontario *Police Services Act*, rather than an MOU. In Information for Lawyers — Acting for Police Officers in Ontario Special Investigations Unit (“SIU”) Investigations, the Law Society of Upper Canada advises:

As the [Law Society] rule requires that a lawyer cannot treat information as confidential as between joint clients and the regulation requires that the police officers not indirectly communicate with each other concerning their involvement in the incident, it is difficult to see how segregated police officers can properly

be jointly represented.

Lawyers should also review the Supreme Court of Canada decision in *Wood v. Schaeffer* 2013 SCC 71, where the Court concluded that the Ontario *Police Services Act* and regulations prohibit subject and witness officers from consulting with counsel until the officers have completed their police notes and filed them with the chief of police.

Lawyers who, in spite of this Ethics Committee opinion, feel they have a good reason for jointly representing two or more police officers in these circumstances, should contact the committee for an opinion on the propriety of doing so. ❖

DISCIPLINE ADVISORY

You are facing a Law Society investigation. What do you need to know?

Simple answer: You must cooperate.

THE LAW SOCIETY considers all complaints about lawyer conduct or competency, receiving over 1,100 each year. So it wouldn't be surprising if, at some point in your career, you receive a letter from us asking for a response to a complaint.

As a lawyer, you have a duty to cooperate with Law Society investigations, including complaint and forensic investigations. Refusal to cooperate may lead to a citation and a disciplinary hearing, independent of the original complaint.

Law Society Rule 3-5(6) sets out the positive obligation for a lawyer to cooperate fully with a Law Society investigation. Rule 3-5(6.1) lists many of the Law Society's investigative powers, including the power to require a lawyer to:

- produce files, documents and other records for examination or copying;
- attend an interview and answer questions;
- cause an employee or agent of the lawyer to answer questions and provide information.

Lawyers have an obligation to cooperate

even if the information sought by the Law Society is privileged or confidential (Rule 3-5(10)). Lawyers also have an obligation to cooperate regardless of whether they are the subject of the complaint in question.

The *Code of Professional Conduct for British Columbia* also emphasizes the ethical duty of a lawyer to cooperate. Rule 7.1-1 provides that a lawyer must:

The public must have confidence in the Law Society's ability to investigate and regulate its members.

- reply promptly and completely to any communication from the Law Society;
- provide documents as required to the Law Society;
- not improperly obstruct or delay Law Society investigations, audits and inquiries;
- cooperate with Law Society investiga-

tions, audits and inquiries involving the lawyer or a member of the lawyer's firm;

- comply with orders made under the *Legal Profession Act* or Law Society Rules; and
- otherwise comply with the Law Society's regulation of the lawyer's practice.

We recognize that lawyers may be very concerned to learn they are the subject of a complaint investigation. If it happens to you, it is important to deal with the situation promptly. Consider talking with a senior lawyer who is experienced in Law Society matters, and if it is a serious allegation, you may wish to retain counsel to represent you.

The public must have confidence in the Law Society's ability to investigate and regulate its members. As a result, the Law Society relies on prompt and complete replies from lawyers during investigations to uphold its paramount duty of protecting the public interest and the administration of justice. ❖

Practice watch

by Barbara Buchanan, Practice Advisor

IMPROPER TO GIVE ANONYMOUS ADVICE FOR A FEE

AS A LAWYER, you may be approached by companies asking you to give legal advice to clients anonymously over the internet. Although the *BC Code* doesn't include a specific rule that says lawyers must identify themselves to clients, it is the Ethics Committee's view that it is implicit in all of the Law Society's rules of conduct that they must do so. Clients cannot know whether a lawyer is conflict-free and otherwise suitable unless they know the lawyer's identity. The committee further opined that it is improper for a lawyer to give anonymous advice for a fee.

Giving anonymous advice may also violate Code rule 3.6-7, the fee-sharing rule, and Law Society Rule 3-63(3), which requires a lawyer to deliver a bill or receipt to the client. Other issues that may arise include the ability to properly screen for conflicts and to comply with the client identification and verification rules.

USE OF CHECKLISTS RECOMMENDED

Don't miss an important step. Whether you are recently called or a senior lawyer, checklists help keep you organized, preventing errors and complaints. You can keep track of what work you've completed and what is outstanding. Sometimes, the checklist will flag potential issues that may not have occurred to you. Some checklists provided by the Law Society on its website include:

- Client identification and verification procedure
- Ethical considerations when a lawyer leaves a firm
- Independent legal advice
- Model conflicts of interest
- New firm (Trust Assurance)
- Cloud computing
- Practice Checklists Manual

Practice Checklists Manual – new updates

Check out the 2014 updates to the Law Society's *Practice Checklists Manual* (in

the Practice Support and Resources section of the website). The manual consists of 41 checklists to assist in managing your files and in carrying out your professional obligations. They are available in PDF but also in Word format, so that you can revise them to suit your personal needs and circumstances. The following checklists have recently been updated to incorporate new developments:

- Family – Family Practice Interview, Family Law Agreement Procedure, Separation Agreement Drafting, Marriage Agreement Drafting, Family Law Proceeding, and Child, Family and Community Service Act Procedure
- Wills and Estates – Will Procedure, Testator Interview, Will Drafting, Probate and Administration, Probate and Administration Procedure
- Litigation – Foreclosure Procedure, General Litigation Procedure, Personal

Injury Plaintiff's Interview or Examination for Discovery, Collections Procedure, Collections – Examination in Aid of Execution, Builders Lien Procedure

- Real Estate – Residential Conveyance Procedure, Mortgage Procedure, Mortgage Drafting

Watch for updates to the rest of the manual later in 2014. If you have suggestions for improving the manual's content, please send them to Barbara Buchanan at bbuchanan@lsbc.org. The manual has been developed by the Law Society with the assistance of the Continuing Legal Education Society of BC.

CLIENT CONFIDENTIALITY CONSIDERATIONS FOR LAWYERS OBTAINING LOANS

Some financial institutions ask borrowers to sign a general security agreement (GSA) as a matter of course for operating lines

SCAM ATTEMPTS AGAINST BC LAWYERS ABOUND

Scammers continue to pretend to be BC lawyers' legitimate new clients, either using the phony debt collection scam or other ruses. Whatever their stratagem, the scamster's end goal is usually to coerce a lawyer to deposit a fraudulent financial instrument (often a bank draft or certified cheque) into a trust account, and then to trick the lawyer into electronically transferring funds to the scamster before the lawyer finds out the instrument is no good. The scams range from the obvious to the very sophisticated and everywhere in between.

Scam attempts against BC lawyers in 2014 include schemes around mergers and acquisitions, personal injury settlements between employer and employee, collecting on franchise agreements, copyright infringement claims, bogus real estate purchasers, CRA tax claims, commercial loans, personal loan agreement claims, unpaid invoices, collaborative divorce agreement claims and fake lawyers.

Protect yourself. Get familiar with the [common characteristics](#) of these scams and the risk management tips on our website (go to Fraud: Alerts and Risk Management). Review the [bad cheque scam names and documents web page](#) as part of your firm's intake process. Appoint someone in your firm to ensure that lawyers and relevant staff are kept up to date with new information from the Law Society.

The Law Society (Margrett George and Surindar Nijjar from the Lawyers Insurance Fund, and Barbara Buchanan, Practice Advisor), and the Continuing Legal Education Society of BC, have presented a free webinar for lawyers regarding these scams: *The bad cheque scam – don't get caught*. Videos from the webinar are available on [CLE's website](#).

Report potential new scams to bbuchanan@lsbc.org. Reporting allows us to notify the profession, as appropriate, and update the list of names and documents on our website.

of credit. If your financial institution asks you to grant a GSA, consider whether it is necessary and appropriate in the circumstances. Read the GSA carefully and make sure that you understand it. Typically, such agreements include the generic wording that is used for all businesses — trucking companies, hardware stores, furniture stores, etc. All of a borrower's assets, such as client lists, work in progress and accounts receivables, generally fall into the hands of a receiver. Assuming the GSA provides for a receiver to be appointed, take possession of the client files and data and run the business, there would typically be no requirement that the receiver be a lawyer. Even if the receiver is a lawyer, there may still be concerns, particularly around conflicts and confidentiality.

Consider whether signing a GSA would compromise your obligation to maintain client confidentiality and solicitor-client privilege under section 3.3 of the *BC Code* in the event of your default. If the GSA only charges specific assets that don't contain client information (e.g., furnishings), client confidentiality should not be compromised.

A lawyer at all times must hold all information concerning the business and affairs of a client in strict confidence with limited exceptions (rules 3.3-1 and 3.3-2.1). Further, a lawyer must not use or disclose a client's information to the disadvantage of the client, or for the benefit of the lawyer or a third person without the client's consent (rule 3.3-2).

The Ethics Committee has opined that it is not improper for a lawyer to make a general assignment of practice receivables or to permit the assignee to exercise rights under the assignment, provided the rules governing client confidentiality are not compromised.

LAWYERS SHARING SPACE

Thinking of sharing space with another lawyer? When lawyers who are not partners or associates in the conventional sense intend to share space, immediate

concerns are potential conflicts of interest between the clients of the space-sharing lawyers and the duty of confidentiality owed to clients. Before entering into such an arrangement, lawyers should decide whether or not they will act for clients adverse in interest, since it may make a difference to the physical office requirements and staffing.

What about sharing space with a non-lawyer? The Ethics Committee is of the view that the standard for sharing space with non-lawyers is even higher than it is for sharing with lawyers.

The Law Society's article [Lawyers Sharing Space](#) (in the Practice Support and



Resources section of the website) addresses *BC Code* rules 3.4-42 and 3.4-43, which specifically relate to lawyers sharing space. The article covers conflicts, confidentiality and marketing, and also includes some practical considerations that affect space-sharing relationships (e.g., avoiding being in an apparent partnership) and specific considerations about sharing space with non-lawyers.

Space sharing with other lawyers can be beneficial if it is done properly. If in doubt as to the proposed nature of your set-up or the activities that you can carry out within the parameters of the Law Society Rules or the *BC Code*, consider calling a Practice Advisor.

RETAINER AGREEMENTS – EXPRESSING AN ANNUAL RATE OF INTEREST ON OUTSTANDING ACCOUNTS

In a recent decision, the court allowed

interest at five percent per annum simple interest on a law firm's outstanding accounts, since the retainer agreement expressed a claim for interest solely as a monthly percentage (*Harper Grey LLP v. Calimbas*, 2014 BCSC 961). The retainer agreement stated in part: "Accordingly, if our accounts are not paid within 30 days of the date of the billing date, we will charge interest at the rate of 1.4% per month, compounded monthly, until the outstanding account is paid." The court noted the requirements of sections 3 and 4 of the *Interest Act*, R.S.C., 1985, c. I-15 in coming to the decision:

3. Whenever any interest is payable by the agreement of parties or by law, and no rate is fixed by the agreement or by law, the rate of interest shall be five per cent per annum.

4. Except as to mortgages on real property or hypothecs on immovables, whenever any interest is, by the terms of any written or printed contract, whether under seal or not, made payable at a rate or percentage per day, week, month, or at any rate or percentage for any period less than a year, no interest exceeding the rate or percentage of five per cent per annum shall be chargeable, payable or recoverable on any part of the principal money unless the contract contains an express statement of the yearly rate or percentage of interest to which the other rate or percentage is equivalent.

In this case, the retainer agreement had expressly set out the interest rate, but it was expressed for a period of less than a year so only 5 per cent simple interest per annum was allowed.

FURTHER INFORMATION

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. ❖

Credentials hearings

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 [Hearing decisions](#) section of the Law Society website.

ANTHONY JAMES LAGEMAAT

Hearing (application for enrolment): March 6 and 7, 2014

Panel: Elizabeth Rowbotham, Chair, Lance Ollenberger and Donald Silversides, QC

Decision issued: July 22, 2014 ([2014 LSBC 31](#))

Counsel: Gerald Cuttler for the Law Society; Dennis Murray, QC for Anthony James Lagemaat

BACKGROUND

In 2010, a hearing was held to consider the application for temporary articles by Anthony James Lagemaat. In the decision of the hearing panel (application for enrolment as a temporary articulated student [2010 LSBC 23](#) and [2010 LSBC 25](#); [Credentials hearing](#), Winter 2010 *Benchers' Bulletin* – all published as Applicant 3), Lagemaat did not meet the burden of proving good character and repute and fitness to become a barrister and solicitor, and his application for enrolment was rejected.

DECISION

In January 2013, Lagemaat applied to be enrolled in the admission program as an articulated student, and the Credentials Committee ordered that a hearing be held with respect to the application.

The hearing panel took into consideration the findings of the 2010 panel that rejected Lagemaat's application for temporary articles on the basis that he was not sufficiently forthright, truthful and frank and that he had not satisfied the panel that he was sufficiently rehabilitated.

The panel also considered current evidence about Lagemaat's character, reputation and fitness.

The panel reviewed counselling reports and a psychological assessment from Lagemaat's counsellor and was satisfied that he had successfully dealt with his psychological issues.

Lagemaat consistently maintained that the allegations of sexual assault and confinement in 2000 were false. In February 2014, a Law Society investigator interviewed two women who had previously been in relationships with Lagemaat. Based on their information, the panel concluded that Lagemaat did not have a tendency toward violence against women.

The panel also determined that it was unlikely that Lagemaat would

ever engage in illegal activity similar to those of the 2000 and 2004 marijuana cultivation incidents.

Lagemaat was genuinely remorseful for the consequences his landlord suffered as a result of the 2004 marijuana cultivation incident. In 2012, he apologized to her and undertook to compensate her, regardless of the outcome of the hearing. While he could have taken these steps much earlier, the panel was heartened by his reconciliation with the landlord and by her support of his enrolment application.

Lagemaat's continuing volunteer work was consistent and appeared to be founded on a dedication to help those less fortunate, rather than on a motivation to simply create a pretense of good works. The panel was impressed by the empathy he appeared to have with those he was serving and his genuine concern for them.

The panel gave a great deal of weight to letters of reference from lawyers in the law firm where Lagemaat works as a full-time employee conducting legal research and providing opinions on matters of criminal law.

Lagemaat acknowledged his mistakes, expressed remorse and did not seek to blame others. Nor did he pretend that he would not face further struggles in his life. The panel concluded that he was likely to deal with future problems and stresses in an honest and forthright manner.

The panel was satisfied that Lagemaat had been fully rehabilitated and was currently of good character and repute and fit to become a barrister and a solicitor of the Supreme Court. The panel did not find it necessary or appropriate to impose any conditions on his enrolment as an articulated student.

The panel granted Lagemaat's application for enrolment as an articulated student and ordered that he pay \$2,000 in costs.

GLEN CAMERON TEDHAM

Hearing (application for enrolment): June 12, 2014

Panel: Nancy Merrill, Chair, Gavin Hume, QC and Laura Nashman

Decision issued: August 7, 2014 ([2014 LSBC 34](#))

Counsel: Henry Wood, QC for the Law Society; Michael Tammen, QC for Glen Cameron Tedham

When Glen Cameron Tedham applied for enrolment, the Credentials Committee raised issues about his history.

In 1994, Tedham was charged with shoplifting in California at age 23. He was convicted of misdemeanour trespassing, was fined and placed on probation for 12 months. Tedham candidly admitted that he knew that this action was wrong and unacceptable.

In 2005, Tedham was charged and convicted under the *Customs Act* for failing to declare alcohol that had been purchased in the United

States. Tedham explained that it was his view that he should simply answer the questions of the customs officer and no more. He recognizes that this was not appropriate and is more careful and complete about his declarations when crossing the border.

In 2010, Tedham was charged and convicted under the BC *Motor Vehicle Act* for disobeying a railway stop sign. He was working at a film shoot and took a production vehicle across the tracks without stopping, as he could see that the tracks were clear. He paid the fine shortly after the ticket was issued.

Tedham filed for personal bankruptcy in October 2003 and was discharged in July 2004. His debts totalled \$900,000 and were largely related to his involvement in the movie-production business. This was of considerable concern to the panel, given the trust the public places in lawyers with respect to the handling of trust funds. However, the panel accepted that Tedham was subject to financial circumstances beyond his control at the time.

In December 2010, Tedham was driving while intoxicated and hit a construction barrier. He was charged and subsequently convicted under the BC *Motor Vehicle Act* for failing to remain at the scene of an accident, failing to produce a driver's licence, and driving without due care.

After this accident, Tedham entered into a regime associated with Alcoholics Anonymous and, with the support of the Lawyers Assistance Program, he has been sober since October 2011.

An addiction specialist advised the Law Society that Tedham suffers from a substance abuse disorder. In the specialist's professional opinion, Tedham's history indicates that he had successfully entered into stable abstinent remission from that medical condition.

After completing his third year of law school, Tedham worked at a law firm in various capacities, latterly with the permission of the Law Society as a paralegal. This law firm committed to employ him as a

student and to provide appropriate supervision during his articling year.

The panel reviewed letters of recommendation, including ones from the principal of the law firm where Tedham works and from the lawyer who is his sponsor in the AA program and also a member of the Lawyers Assistance Program Accountability Group. Both lawyers fully supported Tedham's application for articles.

The addiction specialist made recommendations of steps to be taken to ensure that Tedham would remain medically fit to become an articulated student. Tedham agreed to all of the recommendations. The panel asked the parties to reduce their apparent agreement to writing for its consideration.

The limitations and conditions agreed to included that Tedham:

1. article and practise only in a law firm or other business setting in which he is supervised by at least one lawyer with a minimum of eight years of call who is in active practice;
2. not be a signatory on a trust account; and
3. comply with all of the recommendations made in the addiction specialist's report.

Tedham must also instruct his monitor to report promptly to the Law Society any non-compliance with the monitoring or relapse-prevention agreements and submit a report to the Credentials Committee every 12 months while monitoring is in place and at the end of the monitoring period.

The panel concluded that Tedham was currently of good character and repute and fit to be an articulated student. In order to ensure that he remains fit, the panel ordered that Tedham comply with the terms of the agreement during his articles and recommended that the Credentials Committee continue the terms for a three-year period of practice following his call and admission. ♦

Conduct reviews

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

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

- the lawyer's professional conduct record;

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

BREACH OF UNDERTAKING

A lawyer failed to honour his undertaking to request that settlement funds be paid to him rather than his client so that the funds could, in turn, be used to pay the client's former lawyer's accounts, contrary to

continued on page 23

Discipline Digest

BELOW ARE SUMMARIES with respect to:

- Amarjit Singh Dhindsa
- Tim Yao-Yuan Xia
- Ronald Wayne Perrick
- Thomas Paul Harding
- Douglas Bernard Chiasson

For the full text of discipline decisions, visit the [Hearings reports](#) section of the Law Society website.

AMARJIT SINGH DHINDSA

Abbotsford, BC

Called to the bar: June 8, 2001

Discipline hearing: January 15, 2014

Panel: Thomas Fellhauer, Chair, Paula Cayley and John Waddell, QC

Oral reasons: January 15, 2014

Decision issued: April 17, 2014 ([2014 LSBC 18](#))

Counsel: Carolyn Gulabsingh for the Law Society; Gerald A. Cuttler for Amarjit Singh Dhindsa

FACTS

On February 2, 2012, Amarjit Singh Dhindsa was retained to act for a client who had entered into a contract to sell property to another company.

On February 10, the purchaser's lawyer sent Dhindsa a letter setting out the undertakings upon which he would send the net sale proceeds to Dhindsa in trust. The undertakings included requirements that Dhindsa provide, within five business days, a copy of his letter to the bank enclosing the payout monies, and obtain a discharge of mortgage and an assignment of rents in a timely manner.

Dhindsa met with his client on February 24 and then assigned primary responsibility for this transaction to a legal assistant who was experienced in conveyancing.

Dhindsa's conveyancing staff were informed of the importance of using a checklist in the client file for diarizing and following up in order to fulfill undertakings and obtain discharges on a timely basis. His staff were also instructed to bring to his attention any issues or problems that arose. Dhindsa did not review or audit files prior to closing the file to ensure the conveyance had completed and that all obligations were performed.

During the course of the transaction, Dhindsa's legal assistant prepared conveyance documents and letters to the vendor, the purchaser's lawyer and the bank. Two letters were incorrectly dated. Dhindsa did not review any letters sent out on his behalf, and his legal assistant did not copy him on any incoming correspondence or emails

related to the transaction.

The sale of the property completed on March 1, 2012. On June 1, the purchaser's lawyer advised the legal assistant that one of the mortgages and one of the assignments of rents remained outstanding. The legal assistant did not investigate this matter further and did not bring it to Dhindsa's attention.

On July 4, 2012, the purchaser's lawyer reported Dhindsa to the Law Society.

ADMISSION AND DISCIPLINARY ACTION

Dhindsa admitted that he committed professional misconduct by failing to honour the trust conditions imposed by the purchaser's lawyer and by abdicating his professional responsibility to maintain the client's file, properly delegate tasks and adequately supervise his staff. Dhindsa admitted that he breached the rules by failing to deliver a five-day report detailing that he had delivered funds to the lender and had not obtained discharges from the lender in respect of a mortgage and an assignment of rents, contrary to the rules.

Dhindsa had virtually no oversight over his client's file. After meeting with his client on February 24, 2012, he did not review the file again until he was advised of the complaint to the Law Society. This was the first time that he learned that the undertakings were not being fulfilled, discharges were not obtained and reporting letters were not completed.

Dhindsa accepted the undertakings requested by the purchaser's lawyer; however, he did not take any steps to actually ensure that those undertakings were complied with. He did not discuss the undertakings with his staff or follow up with them. He also did not prepare any report to comply with the rules.

The panel considered Dhindsa's professional conduct record as an aggravating factor because he had a prior history of breaching an undertaking.

Dhindsa took steps to fulfill the undertakings immediately after he became aware that they had been breached. The panel noted that there was no discernible advantage gained by Dhindsa by his misconduct. While the purchaser may have suffered some inconvenience and potential increased legal costs, there did not appear to be any other consequence of significance.

The panel accepted Dhindsa's admissions and ordered that he pay:

1. a \$5,000 fine; and
2. \$2,500 in costs.

The panel ordered that the citation, the agreed statement of facts and the transcripts of the hearing be sealed to protect confidential client and third-party information. The public has access to the essential information to understand the context of Dhindsa's professional misconduct and the reasons for the panel's decision.

TIM YAO-YUAN XIA

Vancouver, BC

Called to the bar: May 20, 1994

Discipline hearing: March 27, 2014

Panel: David Mossop, QC, Chair, Jasmin Ahmad and Clayton Shultz

Oral decision (facts and determination): March 27, 2014

Decision issued: June 11, 2014 (2014 LSBC 24)

Counsel: Kieron Grady for the Law Society; Henry Wood, QC for Tim Yao-Yuan Xia

FACTS

On October 31, 2008, Tim Yao-Yuan Xia met with a new client and was asked to draft a marital separation agreement. The client advised Xia that his wife was in agreement with the terms.

Xia prepared the separation agreement. His client signed it and Xia witnessed his signature. The client told Xia that he would arrange for his wife's signature on the separation agreement in the presence of another lawyer.

On November 8, 2008, the client requested that Xia prepare the necessary paperwork to effect a transfer of property to his son. Based on his client's instructions, Xia prepared a transfer document, which was signed by his client and witnessed by Xia.

The client also presented copies of two one-page agreements between him and his son, both dated March 31, 2004. One agreement was signed by the son and witnessed by a notary public.

The other agreement only had the signatures of the son and client and did not indicate that it had been witnessed by anyone. Xia was asked to witness the signatures of the client and his son that were already on this agreement.

Xia advised the client that the agreement was legally binding without witnesses to the signatures. However, the client was insistent and requested that Xia "formalize" the agreement by signing it as a witness. Xia signed the agreement as witness to the signatures contained in it and affixed his stamp.

Xia did not witness the signature of either his client or the son contained on the agreement, nor did he affix a date when he purported to witness the two signatures. By signing as a witness, Xia confirmed that the signatures were genuine.

ADMISSION AND DISCIPLINARY ACTION

Xia admitted that his conduct in affixing his signature as a witness to the agreement when he had not witnessed either of the signatures constituted professional misconduct.

By affixing his signature to the agreement, Xia falsely represented that he witnessed the parties' execution of the agreement on the date specified. This false statement cast doubt on Xia's professional integrity and reflected adversely on the integrity of the legal profession.

There was no evidence that the signatories to the agreement signed the documents for any improper purpose or that Xia's conduct caused

any direct harm or resulted in any adverse consequences to any party. There was also no evidence that Xia or his client gained any advantage as a result. The agreement did not require a witness to the signatures and was valid even without Xia purporting to witness it.

Xia's professional conduct record disclosed a history of involvement with the Practice Standards Committee that indicated that he had, at least in the past, struggled with practice standards. At the time of the hearing, he was conducting his practice under a practice supervision agreement.

The panel considered Xia's early admission of wrongdoing as a mitigating factor.

The panel accepted Xia's admission of professional misconduct and ordered that he pay:

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

RONALD WAYNE PERRICK

North Vancouver, BC

Called to the bar: May 17, 1971

Discipline hearings: October 21, 2013 (application concerning abuse of process), October 21, 22, 23, 24 and 25, 2013 and April 25, 2014

Panel: David Renwick, QC, Chair, John (Woody) Hayes and Bruce LeRose, QC

Oral reasons: October 21, 2013

Decisions issued: January 16 (2014 LSBC 01), January 23 (2014 LSBC 03) and June 12, 2014 (2014 LSBC 25)

Counsel: Alison Kirby for the Law Society; Ronald Wayne Perrick on his own behalf

FACTS

In April 2003, Ronald Wayne Perrick was retained by the shareholders of a company with respect to the sale of their property. The shareholders were a husband and wife, each of whom owned 50 per cent of the voting shares, together with their four children. Perrick knew that the parents were the sole officers, directors and voting shareholders of the company, and that the property represented all, or substantially all, of the assets of the company.

One of the parents died in December 2004 and the other died in October 2005. Perrick was aware of each of the deaths shortly after they occurred.

The property was sold for \$5.75 million with a closing date of February 9, 2006. The sale proceeds were deposited into Perrick's law firm trust account. A dispute quickly arose as to when the money would be distributed and the amount of Perrick's fee.

The 11 allegations in this case are listed in five categories:

Improper use of expired powers of attorney

In 2006, Perrick prepared an Assignment of Shares and witnessed the signatures of two of the siblings, as attorneys for the parents, when

he knew that the parents were deceased, and that the powers of attorney were no longer valid. He knew that the parents' wills directed that one son would receive the voting shares so he could continue on with the business, but that would only occur upon their deaths.

Perrick acknowledged that he had a significant self-interest in ensuring that the real estate transaction completed, as his fees were contingent upon the closing.

Backdating assignment of shares

When preparing the Assignment of Shares in 2006, Perrick backdated it to October 21, 2004. He knew that the company's corporate solicitor would be preparing documentation approving the property sale and the transfer of voting shares based on the backdated assignment. Perrick suggested that the end justified the means as all parties wanted the sale to complete and they wouldn't be concerned how it happened.

Failure to provide quality of service

Perrick did not keep his client reasonably informed of the handling of the disbursement of trust funds. On March 2, 2006, he provided the company with a spreadsheet showing his all-inclusive fee of \$926,916.

The client was not advised of the basis for Perrick's fees. The company retained legal counsel who made numerous requests for an accounting from Perrick. After instructing their legal counsel to commence court action, Perrick rendered his statement of account on June 15, 2006. However, he only disclosed that the funds had been withdrawn from trust on November 28, 2006.

Perrick did not take reasonable steps to determine who was authorized to give instructions on behalf of the company. To facilitate the completion of the sale on February 9, 2006, Perrick prepared the backdated assignment, allowing one sibling to become the directing shareholder for the company. Until then, he was taking his directions on behalf of the company from another sibling. Perrick failed to recognize that there were competing interests among the siblings.

Failure to respond to communications from another lawyer

Perrick failed to respond promptly to communications from opposing counsel regarding the handling and disbursement of the trust funds. He tried to justify this by stating that he had provided the accounting to the company and did not need to respond to opposing counsel's communications.

Breach of rules

Perrick did not enter into a written contingent fee agreement with the company or any members of the family. However, it was conceded that he would not charge them anything if he did not complete the sale of the property, but if he was instrumental in selling the property, there would be some form of a fee. He arbitrarily and unilaterally fixed the fee calculation, took the monies from trust, and then tried to justify his actions by preparing a fee account.

He failed to account to his client for funds entrusted to him.

Perrick was careless and failed to properly instruct his staff to record trust transactions within seven days. His client trust ledger showed that the entries in the trust account were made haphazardly, out of time and out of sequence to events as they transpired.

Although Perrick was aware that legal counsel was retained by the company with respect to a dispute over his fees, he continued to withdraw monies from his trust account.

He withdrew fees prior to the delivery of a bill to his client.

DETERMINATION

A judge determined that Perrick had removed the funds from trust without rendering a statement of account pursuant to the rules. As Perrick had not disclosed what he had done with the money, the court ordered judgment against him and the law firm for the sum of \$926,916 plus interest. The court also determined that Perrick's misconduct precluded him from claiming fees.

The panel ruled that the Law Society was entitled to rely upon the judge's reasons and that those findings established a prima facie case against Perrick with respect to 10 of the 11 allegations. The panel further ordered that Perrick was prohibited from re-litigating those issues as it would result in an abuse of process.

The panel found that Perrick's actions in these allegations amounted to professional misconduct, with the exception of his failure to record trust transactions within seven days, which was a breach of the rules. The panel dismissed an allegation of failure to account to the client as it was duplicative of another allegation in which professional misconduct was established.

DISCIPLINARY ACTION

The panel considered significant aggravating factors. Perrick had engaged in multiple serious instances of professional misconduct in order to fulfill his client's goal of completing a commercial real estate transaction, and then his own goal of receiving a substantial legal fee for his services.

Perrick never admitted nor acknowledged any misconduct. In order to obtain an accounting of the trust funds and a proper legal bill for the services rendered, the victims had to retain new counsel and commence lengthy and onerous court proceedings.

The panel determined that the disciplinary action must send a strong message to Perrick that his management of this file was not only irresponsible, but also unethical and could not be condoned in the least. The panel felt that, ordinarily, a 90 day-suspension would be warranted in the case. However, given Perrick's age, his 43 years of practice with a clean discipline record and, particularly, the fact that the Law Society was not seeking a suspension, the panel imposed a fine of \$15,000 for backdating and improper use of documents and an additional \$10,000 for other misconduct and breaches of the rules.

The panel ordered that Perrick pay:

1. a \$25,000 fine, and
2. \$24,210 in costs.

THOMAS PAUL HARDING

Surrey, BC

Called to the bar: August 31, 1990

Citation issued June 18, 2013

Discipline hearing: April 29 to May 1, 2014

Panel: Cameron Ward, Chair, Dennis Day and Brian J. Wallace, QC

Decision issued: June 27, 2014 ([2014 LSBC 29](#))

Counsel: Robin McFee, QC for the Law Society; Gerald Cuttler for Thomas Paul Harding

FACTS

In June 2012, Harding agreed to assist his mother-in-law with a possible claim arising from a motor vehicle accident. Her vehicle was rendered inoperable and had been towed to a secure compound at a towing facility.

Harding went to the towing facility to take pictures of the damage to his mother-in-law's vehicle before it could be moved or altered. He was concerned that liability for the accident might be an issue, making the nature of the damage important.

Harding spoke to an employee of the towing facility through the small opening in a window that separates the public from the staff. He was advised that he could not take pictures and that only the registered owner was legally allowed to go into the yard.

Harding argued that he was the registered owner's lawyer and could go into the yard. After consulting a colleague, the employee advised Harding that he would need written permission from the owner to go look at her car.

Harding reluctantly left and went to his mother-in-law's residence to obtain a handwritten letter of authorization. He returned to the towing facility 45 minutes later.

An employee came to the window and advised that she would call her manager. Harding held the handwritten letter against the glass and said that if he didn't have an answer in less than 10 minutes he was going to call the police.

While waiting for the employee to return, Harding took photographs of the reception area and personnel through the window. Another employee told him that it was illegal to take pictures, but he continued to do so.

Harding then left the office and went to the parking area where he phoned the RCMP. He said that he needed "someone there to talk to these idiots because otherwise you'll have to send a police officer probably to arrest me because I'm going to go get a crowbar and smash up the place."

While the RCMP dispatcher was on the line, Harding moved his car in front of the gate to block access to the secure storage area and waited for the police to arrive.

As there were several security cameras at the towing facility, much of

what transpired during Harding's visit was recorded.

DETERMINATION

The panel had to determine whether, in the context of seeking to preserve evidence for a client, Harding violated the prohibition against dishonourable or questionable conduct that reflects badly on the integrity either of the lawyer or of the profession and, if so, whether the conduct is a marked departure from acceptable standards. The panel considered three issues: the crowbar comment, taking photographs and blocking the entrance to the storage area.

Harding's crowbar comment was made to an RCMP dispatcher to emphasize the volatility of the situation and to persuade her that police attendance was required. While the comment was apparently overheard by an employee, there was no evidence to suggest that Harding intended it to be taken as a threat.

Harding acknowledged making this remark in a moment of frustration, and he provided a written apology to the Law Society. The panel could not say that this statement, viewed in context of protecting a client's interest, represented a marked departure from the standard of conduct expected of lawyers.

The panel found that, in taking the photographs, Harding did not breach anyone's privacy. The towing facility is a public place under video surveillance.

While he was aggressive and rude, Harding claimed he had a duty to create a record to protect the interests of his client. The fact that the employees refused consent and that the towing facility asserted a policy prohibiting photographs does not make taking pictures a marked departure from the standard of conduct the Law Society expects of lawyers. The panel found that this act did not constitute professional misconduct.

Harding moved his car to block the entrance to the storage area to prevent the removal of his client's car. It was aggressive, but done out of the belief that it was necessary to protect his client's interest. The panel found that this action did not constitute professional misconduct.

DECISION

The panel dismissed the citation and the three allegations against Harding.

Citation issued December 3, 2013

Discipline hearing: May 14, 2014

Panel: Nancy Merrill, Chair, Robert Smith and John Waddell, QC

Decision issued: July 7, 2014 ([2014 LSBC 30](#))

Counsel: Kieron Grady for the Law Society; Gerald Cuttler for Thomas Paul Harding

FACTS

In January 2013, Thomas Paul Harding was retained by a client in a family law proceeding against her husband. The issues in the

proceeding included spousal and child support. The husband had been jailed twice for failing to comply with court orders, prior to Harding being retained by the wife.

On August 1, Harding and both opposing co-counsel attended court regarding Harding's Notice of Application dated July 24 seeking relief against his client's husband, which included jail for non-compliance with earlier orders. Neither Harding's client nor her husband was present. The judge heard counsel on an earlier Notice of Application; however, due to a lack of time, the judge advised he would not hear the July 24 application on that date.

Harding and the two opposing lawyers discussed the case outside the courtroom. According to the complainant, Harding said words to the effect that his client's husband should be jailed and that he might learn his lesson after he's been gang raped.

On the afternoon of August 1, Harding sent an email to opposing counsel about the case and the need to schedule court dates. Co-counsel did not respond to his email.

On August 8, Harding was advised that both opposing co-counsel intended to withdraw as counsel for his client's husband.

On August 14, one of the opposing lawyers complained to the Law Society about Harding's alleged comment.

DETERMINATION

There were two issues before the panel:

1. whether Harding made the alleged comment; and
2. if he did make the comment, did the comment constitute professional misconduct?

Harding was insistent that he did not make the comment.

At the time of the incident, the complainant had been a lawyer for less than two years and was 26 years of age. She had no previous dealings with Harding that would have resulted in animosity or bad feelings.

The complainant did not speak to her co-counsel about the alleged comment until a few days later when she was preparing her complaint. Her co-counsel advised that she had not heard the alleged comment. The panel found it odd that the complainant did not speak to her co-counsel about such an offensive comment immediately after they left the courthouse.

The complainant did not respond to Harding's email on August 1, either to advise that she and her co-counsel would be withdrawing from the case or to mention the alleged comment. By her silence, she missed an opportunity to confirm the alleged comment with Harding.

On April 11, 2014, Harding wrote a letter of apology to the complainant. The letter did not constitute an admission and was prepared in close proximity to the hearing. The panel had the impression that it was prepared for a strategic rather than a sincere purpose.

The panel concluded that it had not been established on a balance of probabilities that Harding made the alleged comment.

Given the panel's finding, it was not necessary to make a determination

on whether the alleged comment constituted professional misconduct. However, the panel noted that, while the alleged comment was offensive and ill-advised, there were a number of factors that would have prevented it from crossing the line to professional misconduct.

The alleged comment was not passed on to the complainant's client, and there was no evidence that Harding's intention, or the complainant's interpretation of the alleged comment, was to persuade or intimidate the complainant into advising her client to comply with the court orders. Further, if the alleged comment was made, it was made only once, outside the hearing of third parties, and in understandably frustrating circumstances. The alleged comment was found to be closer to mere rudeness or discourtesy than professional misconduct.

The panel dismissed the allegation that Harding's actions constituted professional misconduct.

DOUGLAS BERNARD CHIASSON

Squamish, BC

Called to the bar: May 18, 1990

Discipline hearing: May 22, 2014

Panel: Thomas Fellhauer, Chair, Don Amos and Jennifer Chow

Oral reasons: May 22, 2014

Decision issued: July 30, 2014 (2014 LSBC 32)

Counsel: Alison Kirby for the Law Society; Douglas Bernard Chiasson on his own behalf

FACTS

In March 2007, Douglas Bernard Chiasson was retained by a client in a personal injury matter related to a motor vehicle accident. Chiasson and his client entered into a written contingency fee agreement that provided that he would be paid, among other things, an amount equal to 25 per cent of any settlement money plus disbursements.

From March 2007 to May 2010, Chiasson corresponded with various medical practitioners on his client's behalf, contacted the Insurance Corporation of British Columbia (ICBC) regarding a settlement offer, met with his client; and filed and served a writ of summons and statement of claim.

Between May and October 2010, other than submitting further receipts to ICBC, Chiasson did nothing to advance his client's claim. Between October and December 2010, he corresponded with ICBC regarding his client's benefits.

In December 2010, Chiasson sent his client a letter enclosing a cheque from ICBC and updating her on requests to ICBC for reimbursement of medical expenses.

Between December 2010 and May 2012, despite being contacted by ICBC counsel requesting information about service of the writ and statement of claim, Chiasson did nothing to advance his client's claim. In particular, Chiasson failed to return telephone calls, failed to contact ICBC at his client's request, took no steps to advance the

claim and failed to provide progress updates to his client.

In May 2012, the client told Chiasson that he was fired. Chiasson continued to act on the client's behalf, but did not attempt to contact her between May and November 2012.

In June 2012, Chiasson's client made a complaint to the Law Society.

In November 2012, Chiasson contacted his client seeking instructions to settle her ICBC claim. ICBC offered to settle the claim for a sum plus taxable costs and disbursements.

In December 2012, Chiasson accepted ICBC's offer to settle on his client's behalf. He received a cheque from ICBC as settlement funds including costs and disbursements.

Chiasson then provided his client with a cheque and a bill for legal services. His bill was based on 25 per cent of the total settlement amount, including costs and disbursements. This was contrary to the written contingency fee agreement. Chiasson subsequently withdrew the amount of his bill from his pooled trust account in payment of the legal fees.

ADMISSIONS AND DISCIPLINARY ACTION

Chiasson admitted that his conduct constituted professional

misconduct when he failed to take any substantive steps to advance his client's claim, failed to provide his client with progress updates or answer reasonable requests for information, and continued to act on his client's behalf, without communicating with his client, after being told he was fired

Chiasson also admitted that, when he withdrew funds from his trust account to pay his fees, he ought to have known that he was not entitled to 25 per cent of the total amount recovered on his client's behalf. The contingency fee agreement did not entitle him to any percentage of costs and, if it did, the agreement would have been contrary to the *Legal Profession Act*. Chiasson admitted that his conduct amounted to professional misconduct.

In determining disciplinary action, the panel considered the absence of any directly relevant or recent disciplinary history and the fact that there was no dishonesty or deceitful conduct. The panel also noted that Chiasson was cooperative during the investigation and prosecution of this complaint.

The panel accepted Chiasson's admissions of professional misconduct and ordered that he pay:

1. a \$4,500 fine; and
2. \$1,000 in costs. ❖

Conduct reviews ... from page 17

Rules 5.1-6 and 7.2-11 of the *BC Code*. A conduct review subcommittee discussed ways that the lawyer could ensure that undertakings that were not immediately required to be fulfilled, as in the case of sales of matrimonial property, remained at the forefront of a lawyer's mind, such as placing prominent notes on the file. (CR 2014-08)

RUDENESS AND INCIVILITY

A lawyer sent correspondence to his brother and his brother's counsel containing rude and accusatory statements about his brother's counsel, contrary to Rule 2.1-4 of the *BC Code*. The lawyer also included materials from a Law Society complaint investigation in affidavits sworn and filed in court, contrary to Law Society Rule 3-3(1) and section 87 of the *Legal Profession Act*. A conduct review subcommittee recommended that the lawyer not permit staff to sign letters on his behalf that contained any substantive discussions. It also suggested that the lawyer wait 24 hours before sending any correspondence written in haste or anger, to allow time for careful reflection. The lawyer decided to retain counsel to deal with the family dispute in light of his personal emotional investment and its effect on his practice. (CR 2014-09)

BREACH OF CONFIDENTIALITY

A lawyer denied breaching her duty of confidentiality to her client when speaking with a social worker, claiming she was referring to the client's case in hypothetical terms. However, the lawyer took inadequate notes of the conversation. The lawyer now has a computerized file management software package to keep notes of all telephone conversations at the office. (CR 2014-10)

A lawyer attached confidential correspondence regarding a Law Society complaint investigation to an affidavit, contrary to Law Society Rule 3-3(1) and section 87 of the *Legal Profession Act*. These rules exist to protect the confidentiality of the Law Society's regulatory process. The improper use by the other party of the confidential documents did not absolve the lawyer of his own obligation to seek the consent of the executive director. (CR 2014-12)

BREACH OF NO-CASH RULE

A lawyer accepted an aggregate amount of cash in excess of \$7,500 on one client matter, contrary to Law Society Rule 3-5.1(3). The lawyer has taken steps to instruct staff about the no-cash rule, including the aggregate aspect of the rule. He is now using software to produce monthly printouts of cash deposits for each client. (CR 2014-11) ❖

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