The Law Society of British Columbia

2012: No. 2 • SUMMER

BENCHERS' BULLETIN

Keeping BC lawyers informed

FEATURE

The times they are a changing

by Bruce A. LeRose, QC

OVER THE PAST number of years, the Law Society of BC has made great strides to become a more transparent organization. There can be no doubt that with greater transparency the Law Society becomes more answerable to the public and more responsive to the profession.

Part of this transparency is our strategic planning process. The 2012-2014 Strategic Plan is the Law Society's latest roadmap to becoming a more effective regulator of the legal profession and the delivery of legal services.

The first goal of our new Strategic Plan provides that the Law Society recognizes that it is important to encourage innovation in all of its practices and processes in order to continue to be an effective regulatory body.

In keeping with this first goal, I am pleased to report that the *Legal Profession Amendment Act, 2012*, SBC 2012, c. 16 received Royal Assent on May 14, 2012. The highlights of this new statutory authority include:

- an updated mandate that strengthens the commitment of the Law Society to the protection of the public interest in the administration of justice
- improved investigation and regulatory tools
- new provision for decisions of Law Society hearing panels to be subject to review by a review board, which will include people other than Benchers
- codifying Part B insurance in place of the Special Compensation Fund
- allowing for annual fees to be set by the Benchers
- the ability of the Law Society to regulate law firms and not just lawyers
- increased fines from a maximum of $20,000 to $50,000, in keeping with professional regulators who have more current legislation
- ability to collect fines and costs by filing the order in the Supreme Court, where it can be enforced as if it were an order of the court

These changes and many others have been a major undertaking for the Law Society over the last two years. I am confident that these new rules will help us preserve self-regulation, which is now widely acknowledged as a necessary requirement for a strong, honourable and independent legal profession.

The second goal of our new Strategic Plan is that the public will have better access to legal services.

As these issues and other matters pertaining to access to justice become more hotly debated in the public domain, stakeholders in the justice system need to provide answers other than the tired demand for more money. The Law Society looks forward to working with lawyers to assist in developing business models that will benefit the public and enhance the practice of law.

In pursuit of that goal, last fall the Benchers passed rules that significantly expand the scope of practice for articled students. Soon, changes will be made to the upcoming *Code of Professional Conduct* and the Law Society Rules that will enable paralegals working under the supervision of lawyers to engage in both transactional practice and limited advocacy, all with a goal of providing more affordable and accessible legal services to the general public. We are working with both the Supreme Court and the Provincial Court to secure a right of audience for paralegals who are qualified and properly supervised to appear in both courts on behalf of clients.

Beyond the work of the Law Society,

BENCHERS' BULLETIN

The *Benchers' Bulletin* and related newsletters are published by the Law Society of British Columbia to update BC lawyers, articled 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 $50 per year ($20 for the newsletters only; $30 for the Member's Manual amendments only) by contacting the subscriptions assistant at communications@lsbc.org.

Current and archived issues of the *Bulletin* are published online at lawsociety.bc.ca (see Publications and Resources).

PHOTOGRAPHY

Brian Dennehy Photography: cover and pages 5, 7 and 12

Publications Mail Agreement No. 40064480

the time has come for stakeholders in the justice system to provide alternatives to traditional representation in order to remain relevant. To do nothing in the face of a dramatically different playing field for legal services is no longer an option and will only lead to imposed solutions from outside the profession.

One only need look at the recent introduction of Bill 44 (*Civil Resolution Tribunal Act*) and Bill 52 (*Motor Vehicle Amendment Act*). These proposed statutes are obvious examples of alternative resolution and adjudicative models that respond to the perceived failure of the justice system to deal effectively with public access.

As these issues and other matters pertaining to access to justice become more hotly debated in the public domain, stakeholders in the justice system need to provide answers other than the tired demand for more money. The Law Society looks forward to working with lawyers to assist in developing business models that will benefit the public and enhance the practice of law.

The third and final goal of our new Strategic Plan is that the public will have greater confidence in the administration of justice and the rule of law.

It is important to remind ourselves that the practice of law in British Columbia does not happen in a vacuum. There are numerous external forces that have had and continue to have a real impact on the administration of justice and the changing landscape of access to legal services.

The advent of off-shore out-sourcing, multi-disciplinary practices and alternate business structures will fundamentally alter the traditional delivery of legal services. Some experts refer to this as the "commoditization" of legal services. Can you imagine Wal-Mart or Costco delivering legal services? Thirty years ago we couldn't envision such outlets dispensing pharmaceuticals.

Online solutions continue to grow as a legal service of choice. National mobility and the growing need for national standards will dramatically change how our profession delivers legal services. The advent of off-shore out-sourcing, multi-disciplinary practices and alternate business structures will fundamentally alter the traditional delivery of legal services.

Some experts refer to this as the "commoditization" of legal services. Can you imagine Wal-Mart or Costco delivering legal services? Thirty years ago we couldn't envision such outlets dispensing pharmaceuticals. Notaries are seeking to expand their scope of practice into areas traditionally limited to lawyers.

The point is that, while we can learn from our past, we must be flexible and creative in meeting the public need (dare I say demand) and ensuring that such solutions are driven from within. To wax eloquently about the good old days and to do nothing will only marginalize our involvement. The Law Society will continue to play a leadership role in this changing landscape and looks to the members of the profession to champion change.

President Bruce LeRose, QC attended a CBA seminar in Terrace in March, and spoke on the "Expanding Role of Legal Assistants and Paralegals." He is pictured here with Justice Robert Punnett (left) and Chief Judge Thomas Crabtree.

First half of 2012 sees progress on a number of initiatives

by Timothy E. McGee

THE LAW SOCIETY has been a very busy place in the first half of this year, due in no small part to the recent passing of Bill 40, the *Legal Profession Amendment Act, 2012*. This is the culmination of two years of working with the government to update our legislation. Ultimately, the new legislation has elevated our ability to regulate to the highest current standards, which is good news for the public as well as the profession. I encourage you to review the article in this edition of the Bulletin to learn more about what the changes mean to you and your firm.

We have also taken great interest in the many initiatives proposed by the provincial government in recent weeks. The Law Society has made a submission to the review of the justice system being led by Geoffrey Cowper, QC and is in the process of considering the proposed new civil resolution tribunal. Our focus remains squarely on the impact of these and other solutions on the public interest, and in particular the extent to which they provide more accessible alternatives to legal services while at the same time protecting legal rights and freedoms.

As a part of our ongoing efforts to increase diversity in the profession, we announced the creation of a new scholarship for Aboriginal graduate students in a field of law. The $12,000 annual award aims to enhance the retention of Aboriginal lawyers by supporting the development of Indigenous leaders and role models in the legal academic community. Retaining Aboriginal lawyers in the profession is one of the key objectives of the Society's 2012-2014 Strategic Plan.

The Law Society, in addition to our sponsorship of the event, participated in Law Week 2012 in a novel fashion. *Law Society revealed: a one-day insider's view through Twitter* reflected our ongoing commitment to transparency and accountability. Over the course of the day, our communications team sent over 100 tweets covering everything from our investigative work and discipline activities to phone calls from the public seeking legal resources. The effort provided a unique perspective to the breadth of activities and inquiries we manage each day and ultimately reached over 60,000 Twitter-users.

As always, we welcome your feedback on these or other Law Society matters – please do not hesitate to contact us at 604.669.2533 or ceo@lsbc.org.❖

Your fees at work: Support for pro bono

THE LAW SOCIETY regularly highlights services supported by the annual practice fee so that lawyers are aware of services to which they are entitled as well as organizations that benefit from Law Society funding. In this issue, we feature support for pro bono.

In 2006, the Benchers determined that the Law Society would contribute one percent of the annual practice fee to the Law Foundation to provide stable funding for pro bono programs and organizations in British Columbia. In 2011, the Law Society contributed $152,650 to the Law Foundation, up from $137,660 in 2010. Overall, in 2011, the Law Foundation granted $600,727 to organizations that facilitate the delivery of pro bono services including the following:

- Access Pro Bono Society of BC
- Salvation Army Pro Bono and Justice Services Program
- Multiple Sclerosis Society Volunteer Advocacy Program
- Pro Bono Students Canada (UBC)
- Pro Bono Students Canada (UVic)

Adding in funds provided to the Law Students Legal Advice Program at UBC and the Law Centre at the University of Victoria, a total of $1.1 million was distributed to pro bono services in 2011.

BC lawyers have a longstanding tradition of providing pro bono services and, according to Access Pro Bono Society of BC, are the most generous in the country with their time. In 2011, Access Pro Bono reported that about 7,400 hours had been contributed by BC lawyers to support Access Pro Bono programming.

The Law Foundation reports that 843 lawyers participated in formal pro bono programs in 2011, a further 590 volunteered in clinics and 134 volunteered on roster programs. As a result of these programs, just under 20,000 clients were served.

Even more impressive, as reported via their annual practice declarations to the Law Society, BC lawyers provided about 340,000 hours of pro bono services in 2011, or about 27 hours per lawyer. Certainly, this is something of which the legal community can be very proud.

On behalf of those clients who benefit from the generosity of BC lawyers, the Law Society thanks all those who give their time to assist others.❖

2012 scholarship recipient

Jennifer Wai Yin Chan has been chosen to receive the Law Society scholarship for 2012. She attended the May Benchers meeting, where President Bruce LeRose, QC presented her with a cheque for $12,000.

Chan graduated from the University of Victoria law school. She articled with McCarthy Tétrault and was called to the bar in September 2009. She practised as an associate with McCarthy Tétrault until February 1, 2010, when she became a sole practitioner.

She would like to pursue an LL.M., and her area of interest, in particular, is affordable legal access and the provision of legal aid in BC. Chan intends to research and then propose a legal test for determining precisely what situations will support a right to legal representation. This will include specific examples that argue for a broader right to counsel beyond the limited situations presently recognized.

Chan has recently been accepted for admission to Harvard Law School's LL.M. program.

The Law Society scholarship of $12,000 is offered annually to encourage and financially assist the recipient in completing graduate studies that will ultimately benefit the individual, the province and the legal profession.❖

Law Society revealed: a one-day insider's view through Twitter

THE LAW SOCIETY provided the public with a glimpse of its inner workings on Wednesday April 18 when it showcased in real time on Twitter the work it was doing.

The event was part of the Society's ongoing commitment to transparency and accountability and was initiated by the Society as part of Law Week, which is put on by the Canadian Bar Association in partnership with the Society and others. The project's goal was to increase public understanding of the role of the Law Society and the value provided by independently regulated lawyers.

The results of the campaign exceeded expectations with:

- a potential reach to approximately 66,000 Twitter account holders through original Tweets, ReTweets and Mentions;
- an increase in Law Society Twitter Followers of 11%; and
- print and radio stories in the media about the Law Society and its campaign.

Throughout the day, the Law Society sent 100 Tweets covering everything from phone calls it received outlining concerns about the conduct of a lawyer to where the public can find important resources. Each Tweet respected confidentiality, privacy laws and Law Society disclosure rules. The society's outgoing Tweets provided a revealing look at how it protects the public and supports lawyers in their pursuit of excellence.

Feedback on Twitter during the campaign was overwhelmingly positive. Some examples include:

"enjoying your open house content today"

"interesting stream to track"

"following this one all day"

A lasting record of the Tweets is on the Law Society website.❖

Law Society puts on workshop for journalists

Approximately 30 journalists attended the 2012 media workshop held in Kamloops at Thompson Rivers University on May 16. *Get the story, avoid the legal traps* used a fictitious breaking news story to help journalists gain the tools and insight they need to enhance their legal reporting.

In a survey of participating journalists, 77% agreed and 23% strongly agreed that the workshop will enhance their coverage of legal stories or stories with legal issues. One news director who travelled from Kelowna for the workshop said, "extremely valuable. Thank you!" A local Kamloops newspaper journalist described the workshop as "very educational and entertaining."

The Law Society puts these workshops on in partnership with the Jack Webster Foundation to contribute to the Benchers' strategic objective of effective education of the public; the workshops help journalists have a better understanding of the justice system and legal issues so they can produce knowledgeable and accurate reporting for their audiences.

The panellists for this year's workshop were Sandy Heimlich-Hall, Assistant News Director at Kamloops' CFJC TV7 and media lawyers Dan Burnett and David Sutherland. It was moderated by the Law Society's Dana Bales.

Watch for a video of the workshop on the Law Society's website, where more information about these annual workshops can also be found (click on Newsroom).

FROM THE RURAL EDUCATION AND ACCESS TO LAWYERS INITIATIVE

REAL initiative in full swing

THE RURAL EDUCATION and Access to Lawyers (REAL) initiative is in full swing this year, funding 13 summer student placements in Campbell River, Dawson Creek, Fernie, Invermere, Lumby, Nelson, 100 Mile House, Penticton, Prince George, Smithers (two), Squamish and Trail.

The REAL initiative is made possible by the joint contributions of the Law Society of BC and the Canadian Bar Association, BC Branch, with support confirmed through 2013 for the continued delivery of the core programs:

1. funding for second-year summer student placements;
2. funding the Regional Legal Career Officer position to support students interested in practising in small communities; and
3. organization of regional networking events.

REAL has significantly shifted the dialogue around the projected shortage of lawyers practising in small communities and rural areas, and we look to BC lawyers for their continued support of the REAL initiative as our work has just begun.

The Regional Legal Career Officer is seeking applications from rural practitioners interested in the 2013 summer student placements. The aim is to have these opportunities available for students in the fall so they have REAL careers as a competitive option.

Applications can be found on the REAL website at www.realbc.org.

To find out more about the REAL initiative or how you can help support the coordinated set of programs, please contact:

Michael Jakeman
Regional Legal Career Officer
Email: realbc@bccba.org
Telephone: 1.888.687.3404

And keep up to date by liking us on Facebook: www.facebook.com/realcbabc.

New $12,000 Law Society scholarship for Aboriginal graduate students

IN ADDITION TO the Law Society's existing graduate scholarship, the society is creating a new scholarship for Aboriginal students with outstanding academic achievement who are pursuing graduate studies in a field of law. The $12,000 annual award – which is the same amount as the society's other graduate scholarship – will be available for application in 2013.

Retaining Aboriginal lawyers in the profession is one of the key objectives in the Law Society's 2012-2014 Strategic Plan. The society hopes the scholarship will help support the participation of Aboriginal peoples in the development of law and issues relevant to the legal profession. In addition, it aims to enhance the retention of Aboriginal lawyers by supporting the development of Indigenous leaders and role models in the legal community.

"We know that the public is best served when the legal profession reflects the population, and British Columbia is a culturally diverse place," said President Bruce LeRose, QC. "As the regulator, we can't do it alone, but this scholarship is one contribution that we can make now toward that wider goal."

The Law Society Aboriginal Graduate Scholarship will be offered to eligible applicants to encourage and financially assist those Indigenous candidates in completing graduate studies in law, which will ultimately benefit the individual, the province, and the legal profession in BC. To be considered, applicants must be proceeding to a full program of graduate studies in a field of law at a recognized institution.

More details about the scholarship – which was recommended by the society's Equity and Diversity Advisory Committee – will be posted soon on the society's website in the section containing information about honours and awards offered by the Law Society.

Diversity in the legal profession

Towards a More Diverse Legal Profession: Better practices, better workplaces, better results is now on the Law Society's website and a limited number of print copies will be available soon. The report provides both data illustrating the current demographics of the legal profession in BC and the case for promoting and encouraging diversity within law firms. A summary of the report can be found in the Spring 2012 edition of the *Benchers' Bulletin*.

For more information or to arrange for someone from the Law Society to talk about diversity at your firm, contact the Manager of Policy & Legal Services, Michael Lucas at 604.669.2533.

MILESTONES IN THE PROFESSION

The Law Society hosted a luncheon in Vancouver on April 26 to honour lawyers celebrating milestone anniversaries in the profession in 2012. Receiving 50-year certificates, unless otherwise noted, were:

Back Row (left to right): Marcus Murphy, Preston S. Mott, John S. Butterfield, Russell M. Brink, William R. Miles, QC, William L. Cox (60 years), Thomas H. Hara, QC.

Front Row (left to right): Michael H. Davison (60 years), Norman D. Mullins, QC (60 years), Richard H. Vogel, Peter C.G. Richards (60 years), Digby R. Kier, QC.

Not pictured: Leonard S. Bobroff, Herman Frydenlund (60 years), H. Allan Hope, QC, Anne M.N. Jones, QC, Keith A. Lo, Robert J. Mair, QC, George W. Owen, QC (60 years), Glen B. Pomeroy.

FROM THE CREDENTIALS COMMITTEE

PLTC students' collaboration

THE CREDENTIALS COMMITTEE recently considered the conduct of a pair of articled students attending the Professional Legal Training Course who acknowledged that they had engaged in prohibited collaboration on two of the written PLTC assessments.

The students acknowledged the collaboration and advised that they had discussions about the assessments and ought to have recognized that those discussions were improper. The students advised that their discussions were not undertaken consciously or with the intention of breaching the PLTC Professional Integrity Policy.

In a separate incident, the committee considered the conduct of an articled student who had used work that belonged to a former PLTC student. The student immediately acknowledged using a former student's assessments as a precedent and knowing that this was in breach of the PLTC Professional Integrity Policy.

The Credentials Committee reviewed the performance of the students on the other PLTC assessments and examinations as well as their explanation of how they came to be involved in the prohibited conduct. The committee also considered how important it is to the PLTC program that students not engage in plagiarism or collaboration on assessments or examinations.

In the circumstances, the committee decided that each student's enrolment in the Law Society Admission Program be extended by three months. Further, each student would be required to re-do the two written assessments and each must write an anonymous memorandum to be shared with future PLTC students.

In the memorandum, each student will detail his or her own experience, from detection of the collaboration to the conclusion of this matter by resolution of the Credentials Committee, and how he or she was affected by the process. In addition, the committee decided that the students would be the subject of this anonymous publication in the *Benchers' Bulletin* detailing their actions and the committee's decision.❖

Downtown Vancouver articling offers to stay open to August 17

LAW FIRMS WITH an office in the downtown core of Vancouver (west of Carrall Street and north of False Creek) must keep open all offers of articling positions they make this year until 8 am, Friday, August 17. This timeline, set by the Credential Committee under Rule 2-31, applies to offers firms make to second-year law students or first-year law students, but not offers to third-year law students or offers of summer positions (temporary articles).

A law firm may set a deadline of 8 am on August 17 for acceptance of an offer. If the offer is not accepted, the firm can then make a new offer to another student the same day. Law firms may not ask students whether they would accept an offer if an offer were made, as this places students in the very position Rule 2-31 is intended to prevent.

If a lawyer in a downtown Vancouver firm makes an articling offer and later discovers circumstances that mean it must withdraw the offer prior to August 17, the lawyer must receive prior approval from the Credentials Committee. The committee may consider conflicts of interest or other factors that reflect on a student's suitability as an articled student in deciding whether to allow the lawyer to withdraw the offer.

If a law student advises a law firm that he or she has accepted another offer before August 17, the firm can consider its own offer rejected. However, if a lawyer learns from a third party that a student has accepted another offer, the lawyer should first confirm with the student that the offer is no longer open for this reason.

Contact Member Services at 604.605.5311 for further information.❖

In Brief

LAW SOCIETY'S 2011 REPORT ON PERFORMANCE AND FINANCIAL STATEMENTS

Our 2011 Report on Performance and 2011 financial statements are available online. This annual Report on Performance provides a progress update on the last year of our 2009-2011 Strategic Plan and a review of our core regulatory performance.

JUDICIAL APPOINTMENTS

Hon. Mr. Justice David Harris, of the Supreme Court of BC, was appointed a judge of the BC Court of Appeal, replacing Mr. Justice D.F. Tysoe who elected to become a supernumerary judge.

Gordon Weatherill, QC, a partner with Lawson, Lundell LLP, was appointed a judge of the Supreme Court of BC in Vancouver.

Lesley Muir, counsel at Holmes & King in Vancouver, was appointed a master of the Supreme Court of BC in Vancouver.❖

PRACTICE TIPS, by Dave Bilinsky, Practice Management Advisor

E-billing, e-signatures and paperless offices

♫ No it don't mean a thing it's Mumbo Jumbo
No sense to anything it's Mumbo Jumbo.. ♫

Music, lyrics and recorded by Air Supply.

HOW TO BILL clients in a paperless office is an issue that is receiving a lot of interest at the moment. An additional twist occurs when the client doesn't wish to receive traditional invoices, but instead desires to receive "e-bills" or electronic invoices. Furthermore, there are lawyers who want to render traditional-looking invoices, but in a paperless manner. All three of these situations raise legal, ethical and technological issues.

Starting from first principles, s. 69(1) of the *Legal Profession Act* states that "a lawyer must deliver a bill to the person charged." That section does not limit or constrain a lawyer from rendering a paper invoice, a paperless (i.e., a traditional invoice produced as an Adobe portable document format (PDF) file) invoice or an electronic invoice. A bill in electronic form may, or may not, be readable by a person ("person-readable"). Some accounting programs only produce invoices that can be read by the software ("machine-readable").

I suggest that lawyers confirm with their clients how they wish to be billed. Institutions such as the Legal Services Society (LSS) and ICBC have been requiring their lawyers to render electronic invoices for some time now. Other clients may wish to receive their invoices in PDF. Still others may be more traditional and wish to receive a hard copy.

S. 69(2) states: "A bill may be delivered under subsection (1) by mailing the bill to the last known business or residential address of the person charged." This presents some complications around confidentiality obligations. For example, if a lawyer sends a paperless bill to the client's work email address, the employer may take the view that it is entitled to read employees' emails. Client confidentiality may also be at risk on a shared (e.g., family) computer. The lawyer should ensure that the client understands the client's obligation to keep their information confidential (e.g., password-protected).

For clients such as ICBC or LSS, it is presumed that "delivery of the bill" will occur by the electronic transmission in the form and manner requested by the client. The problem, of course, is that this invoice is in machine-readable form and not in person-readable form

The *Legal Profession Act* has been drafted from the obvious perspective of a lawyer delivering a person-readable form of invoice. Does that mean that a lawyer has to also – and always – produce a person-readable form of invoice? What if

the client has specifically requested that a person-readable bill is not wanted?

It would be very odd if the lawyer had to produce a person-readable form of bill when the client and the lawyer had previously agreed that the lawyer would only be required to deliver a machine-readable form of invoice. This is premised on the fact that, *if asked*, the lawyer *could produce* a printout of that invoice that is person-readable and that would comply with all of the other provisions of section 69 (e.g., it contains a descriptive statement of services with a lump sum charge and a detailed list of disbursements).

In terms of best practices, it would be useful if, in situations where the client wishes to receive a machine-readable form of invoice, the lawyer kept evidence that they approved the pre-bill that is person-readable prior to the rendering of the electronic invoice to the client. This way the firm can document that the lawyer reviewed and approved the billing before it left the firm.

What about signatures? Traditionally, a lawyer would affix a pen and ink signature to an invoice or to a letter accompanying the invoice or, at the very least, the billing would be accompanied by a letter signed on behalf of the lawyer that refers to the bill (s. 69 (3), LPA). What are the requirements in an electronic-billing environment?

For PDF files, lawyers can always affix their Juricert digital signature to the invoice or to a letter accompanying the invoice. That would certainly comply with s. 69(3). In some cases, lawyers may affix a "digitalized" signature – being a graphical image of their paper-based signature to the invoice. Provided that the client *has agreed* that this method would constitute a signed invoice for the purposes of billing, it would appear to meet the requirements of s. 69(3). I would certainly wish to have this documented in writing, presumably in a retainer agreement.

How does a lawyer "sign" a machine-readable invoice? Generally, e-billing software does not incorporate a digital signature or other similar method when producing an electronic invoice.

In order to comply with s. 69(3), the lawyer should have the electronic bill go out with an email that contains a letter (attachment) that is either signed by the lawyer or signed on behalf of the lawyer that refers to the electronic billing. This way, the firm can say that it has complied with s. 69(1) to (3).

Of course, the firm would capture all this information in its paperless filing system and/or accounting system in order that it can produce a printed (person-readable) form on demand to comply with Rule 3-59(2)(c). After all, if it comes to it, you want to be sure that your invoices don't look like a bunch of mumbo jumbo.

PRACTICE WATCH, by Barbara Buchanan, Practice Advisor

New legislation, public harm and confidentiality, practice resources and scams

TRANSITION TO THE NEW LIMITATION ACT

A new *Limitation Act* (Bill 34), intended to replace the current *Limitation Act* and simplify the time limits for filing civil lawsuits, received Royal Assent on May 14, 2012. The new legislation doesn't come into force until proclamation, which is currently expected in 2013.

Lawyers can continue to rely on the current Act's provisions to advise clients on existing claims discovered before the new legislation is in force. Under the new legislation, the two, six and 10-year limitations in the current Act govern claims based on acts or omissions that occur *and are discovered before* the new Act takes effect. The new Act also provides that most claims are discovered when a claimant knew or ought to have known of the damage caused and that a court proceeding would be an appropriate remedy (although discovery is postponed for some claims). Those claims must be brought within the time limits currently prescribed.

The limitations in the new Act govern claims discovered after the new Act is in force, *even those claims arising from acts or omissions occurring before then*. The new Act replaces the current two, six and 10 year limitations for civil claims with a two-year-from-discovery basic limitation and the current 30 year ultimate limitation with a 15-year-from-occurrence limitation (with some exceptions). There are transition provisions relating to the ultimate limitation for claims that are not discovered until after the Act comes into force, including a special transition provision in relation to claims against hospitals and medical practitioners.

This summary isn't intended as a review of the upcoming changes. Understanding the new law and its effects requires a comprehensive review of the Act and its terms. Lawyers should familiarize themselves with the new legislation before it comes into effect so they can properly advise clients about future claims. For more information, see www.ag.gov.bc.ca/legislation/limitation-act/2012.htm.

EDUCATION MATERIALS FOR THE NEW FAMILY LAW ACT

The *Family Law Act* received Royal Assent on November 24, 2011 and is anticipated to come into force in 2013. To prepare for the transition from the *Family Relations Act* to the new Act, the government has several resources on its website at www.ag.gov.bc.ca/legislation/family-law/index.htm.

FUTURE HARM/PUBLIC SAFETY EXCEPTION TO DISCLOSURE OF CLIENTS' CONFIDENTIAL INFORMATION

Lawyers often contact Practice Advisors for confidential ethical advice regarding whether a lawyer can disclose a client's confidential information without the client's consent, when the lawyer believes that there is a risk of death or serious bodily harm to the client or another person. The details vary, and advice is given based on the particular facts; however, the scenarios are often in the family law context. The lawyer may be concerned that a client, former client or a client's current or former spouse will harm the client, the lawyer, law firm staff, or others. Lawyers should be guided by Chapter 5, Rule 12 of the *Professional Conduct Handbook* and should also consider *BC Code of Professional Conduct* Rule 2.03(3) (in force on January 1, 2013). One of the few exceptions to the duty of confidentiality is disclosure to prevent a *crime* involving death or serious bodily harm to any person. Rule 12 states:

> 12. A lawyer may disclose information received as a result of the solicitor-client relationship if the lawyer has reasonable grounds to believe that the disclosure is necessary to prevent a crime involving death or serious bodily harm to any person.

Rule 12 is permissive in that a lawyer *may* disclose information but is not required to do so. Also, the disclosure is in relation to preventing a *crime* involving death or serious bodily harm. Contrast Rule 12 with the upcoming BC Code Rule 2.03(3), which has similar wording but appears to be broader in that the new rule isn't limited to disclosure to prevent a crime. A lawyer must not disclose more information than necessary to prevent the death or serious bodily harm.

> 2.03(3) A lawyer may disclose confidential information, but must not disclose more information than is required, when the lawyer believes on reasonable grounds that there is an imminent risk of death or serious bodily harm, and disclosure is necessary to prevent the death or harm.

The commentary to Rule 2.03 compels lawyers to keep detailed notes if disclosure is permitted under this rule. For the full commentary to Rule 2.03(3), refer to the BC Code on the Law Society website.

It's a big step to disclose a client's confidential information, and it requires careful consideration. Lawyers are encouraged to contact a Practice Advisor for confidential ethical advice before making disclosure.

KEEPING YOUR CLIENT AND LAW FIRM STAFF SAFE FROM RELATIONSHIP VIOLENCE

On a topic related to when a lawyer may disclose confidential client information to prevent death or serious bodily harm pursuant to Handbook Rule 12 of Chapter 5 or BC Code Rule 2.03(3), the Legal Services Society and the Ending Violence Association of BC, with funding from the Ministry of Justice, have developed a brochure, *Is Your Client Safe? A Lawyer's Guide to Relationship Violence*. Five fact sheets, companion pieces to the brochure, highlight the following topics:

- Encouraging Disclosure
- Relationship Violence Client Resources
- Relationship Violence Legal Resources
- Safety Planning for You and Your Staff
- Safety Planning for Your Client

The safety planning fact sheets contain detailed information about creating a safe environment and safety plan for clients and lawyers. For example, one fact sheet suggests finding out what a client wants to happen if she disappears. For more information, see www.legalaid.bc.ca/publications and click on Abuse & family violence to access the brochure and fact sheets.

SCAM ALERTS

The profession was recently alerted to a phony real estate conveyance in which a potential client signs a contract of purchase and sale, provides a bad cheque for a deposit amount much larger than required, and then asks for the deposit back because a failed inspection or some other reason allows him to back out of the deal (June 1, 2012 Notice to the Profession). This particular fraudster has been very active, attempting the scam on at least 10 BC lawyers. Lawyers are encouraged to make other lawyers and realtors aware of the scam.

More news on scams follows.

The Little Black Book of Scams, fake websites and lawyers

Canada's Competition Bureau has recently published The Little Black Book of Scams, a guide to protection against scams (www.competitionbureau.gc.ca). Among other tips, the bureau warns that scammers can easily copy genuine websites and trick people into believing the sites are legitimate. We've notified lawyers about this issue before, as scamsters have copied law firm and other business websites and continue to do so. Consider that scamsters may use phony names or may even use your own name and your firm's name to set up a website or even a phony branch office of your real firm.

I've previously suggested that you monitor your name on the Internet to see how and where it's used (Winter 2011 Practice Watch). Monitoring appears to have taken on more importance. Discuss your options with a professional. You could find someone using your name to advertise legal services with completely different contact information or information that is simply incorrect in order to perpetrate a fraud.

Fraudster pretending he's been hired to create a law firm's website

The Lawyers' Professional Indemnity Company for Ontario lawyers was notified of a fraudster's bold attempt to access an Ontario law firm's computers by pretending that he'd been authorized to create a firm website. For more information see avoidaclaim.com/?p=3402.

Lawyers can expect a variety of imaginative attempts to gain access to their computer systems, a rich source of material for criminal activity. Don't provide confidential information to someone who calls you whom you don't know. Only share sensitive information with a service company by telephone or over the Internet if you've initiated the contact, you're sure that you're dealing with a reputable organization that your firm has actually retained, and a confidentiality agreement is in place.

Personal injury settlement claim scam

The fraudster names and documents web page (www.lawsociety.bc.ca/page.cfm?cid=2392) in the bad cheque scam materials on the website includes three types of personal injury settlement claim scams that have appeared in BC. The first was claims to collect on settlements for infliction of a disease. That was followed by requests to collect on settlements between employers and employees.

The latest was a request to collect on a settlement for serious injuries a potential new client claimed to suffer in a motor vehicle accident. She went so far as to provide a phony doctor's report on her injuries and a copy of the settlement agreement. She averred to be in the UK visiting a relative who was available to speak to the lawyer by phone, claiming she was unable to speak herself due to the hearing difficulties explained in the doctor's report. The lawyer received a well-made but phony $165,500 CIBC bank cheque made out to the law firm in trust, out of which the lawyer was requested to take his fees and forward the rest to the client. For assistance in following the rules on verifying a client's identity outside of Canada, see Appendix II of the Client Identification and Verification Procedure Checklist (go to Publications and Resources / Practice Resources, on the Law Society website).

Reporting scams to the Canadian Anti-Fraud Centre

The Canadian Anti-Fraud Centre, jointly managed by the Competition Bureau, the Ontario Provincial Police and the RCMP, is Canada's central fraud repository and Canadians are encouraged to report confirmed scams to the Centre and to the RCMP or their municipal police force. The Centre reported on May 15, 2012 that its staff, with support from Canadian law enforcement partners, provided vital information that helped Spanish authorities arrest 23 people alleged to have been operating scams intended to convince potential victims (apparently including some Canadians) they were about to receive a lottery prize or an inheritance from an unknown relative. The scamsters made money by asking their targets to pay administration fees and taxes. This type of scam has been attempted on BC lawyers, sometimes by a person posing as a lawyer from the UK or Spain.

Contact the Centre to report a confirmed fraud, or for fraud information:

Toll-free: 1.888.495.8501
Tollfree telefax: 1-888-654-9426
Email: info@antifraudcentre.ca
www.antifraudcentre.ca

Reporting scams to the Law Society

If you've been targeted, report any potential new scams and fraudsters to Practice Advisor Barbara Buchanan. You can get confidential advice in determining if a new matter may be a potential bad cheque scam or whether you can report information to the police or financial institution without a court order. Reporting allows us to notify the profession, as appropriate, and update the Fraud Alerts names and documents section of the Law Society website about scams targeting BC lawyers. If you discover a scam that has resulted, or is about to result, in a shortage of client funds in your trust account, report immediately to the Lawyers Insurance Fund. Of course if you have an actual trust shortage, you must immediately pay enough funds into the account to eliminate the shortage and comply with your obligations to immediately make a written report to the Executive Director (see Rule 3-66).

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Law Society President Bruce LeRose, QC (left) and CEO Tim McGee, with Justice Minister and Attorney General Shirley Bond.

Changes to Legal Profession Act include authority to regulate law firms

"REMEMBER YOUR INVOLVEMENT in this Act, because it is very significant. This is a milestone," said Law Society Chief Executive Officer Tim McGee to the Benchers at their May meeting.

"This legislation is an important moment in our history," added Bruce LeRose, QC, president of the Law Society. "And while a change in legislation may not sound riveting to the average person or even the average lawyer, this Act will have significant repercussions for both the public and lawyers."

The amending act, as Bill 40, received third and final reading in the provincial legislature at the beginning of May, with both sides of the house voicing strong support.

Justice Minister and Attorney General Shirley Bond said in a press release, "These changes give the society more authority to take measures to protect the public on those occasions when substantiated complaints arise."

Leonard Krog, a lawyer and the NDP's critic for the Attorney General, told the house during the final reading, "I am satisfied that this bill represents good progress."

The amending act, formally the *Legal Profession Amendment Act, 2012*, SBC 2012, c. 16, will have several implications for both the public and lawyers.

REGULATING LAW FIRMS AS WELL AS LAWYERS

Previously, the Law Society did not have the authority to regulate law firms – just

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Highlights of the new Legal Profession Act

Many amendments made by the new Act are now in effect; others will come into effect on proclamation, which will take place over the next several months. The Benchers will also be adding accompanying Law Society Rules over the coming year. The following represent significant changes by category under the new Act.

The Law Society mandate

- Section 3 of the Act continues to uphold and protect the public interest in the administration of justice; however, instead of being mandated to advance the interests of lawyers, the Society's obligation to lawyers will be to support and assist them with fulfilling their duties.

Regulation: firms regulated and pro bono work

- The Law Society will have the additional authority to regulate all forms of law firms and to investigate complaints made against a law firm as a whole.
- Lawyers' and law firms' pro bono work will explicitly be regulated. Previously, anything lawyers did without pay was not defined as the practice of law, which allowed non-practising and retired lawyers, who were not permitted to practise law, to provide pro bono legal services. However, it also had the effect that practising lawyers had some files in their offices that were outside the Law Society's mandate to regulate the practice of law, which was not appropriate. Now, when lawyers do pro bono work it will fall under the practice of law.
- The new act changes who can practise law, such that retired and non-practising lawyers will be permitted to conduct pro bono cases, as they currently can – the authority under which they do it within the act is changing, but they will not need to alter what they do.

Investigations: disclosure, suspensions, resignations and medical exams

- The Law Society now has the investigatory powers necessary to regulate lawyers and law firms, including the ability to require lawyers and others to answer questions and produce records.
- Lawyers who are required to disclose information to Law Society investigators are required to do so despite confidentiality and privilege, but the Law Society has the same duty as the lawyers to protect the information.
- The Law Society will be required to provide a process for protecting the privacy of individuals whose personal information is seized or copied incidentally or in error during an investigation.
- When it is necessary to protect the public interest, the Law Society has the authority to suspend a lawyer under investigation, or place conditions on the lawyer's practice, even before there has been a citation.
- Lawyers who are subject to investigation or discipline are not permitted to resign from the Law Society without permission and complying with any conditions required.
- When it is necessary to protect the public, the Law Society has the authority to require a lawyer to submit to a medical examination before the investigation is complete.

Discipline: fines, enforcement and serious crimes

- Maximum fines for discipline violations are increased from $20,000 to $50,000 for lawyers and from $2,000 to $5,000 for students; maximum fines for law firms will be established at $50,000.
- The Law Society is able to collect fines and costs ordered by filing the order in the Supreme Court, where it can be enforced as if it were an order of the court.
- The Benchers will be able to suspend or disbar a lawyer who is convicted of a serious crime, including outside Canada, without a full hearing.

Hearings and appeals: review boards, Court of Appeal and testimony

- Decisions of Law Society hearing panels, all of which include people who aren't lawyers, will be subject to review by a review board, also including people who aren't lawyers.
- A hearing panel can suspend a lawyer who has committed a discipline violation for an indefinite period to enforce compliance with conditions or other requirements.
- A Law Society committee that ordered a hearing on a discipline matter or an application for admission to the legal profession will have the right to appeal the decision of the hearing panel or review board to the Court of Appeal on a question of law.
- A former employee, agent or committee member of the Law Society will not be able to disclose information or to testify as to Law Society functions without the permission of the Law Society.

Trust protection insurance: lawyer theft

- The Special Compensation Fund, initiated in the 1940s to provide, at the discretion of Benchers, compensation to victims of lawyer theft, will officially be replaced by the Part B insurance program, which has been in place since 2004.

Administrative: annual fees and referendums

- The annual fees will be set by the elected and appointed Benchers, not by lawyers in a general meeting. This brings the Law Society in line with other regulatory bodies throughout the country.
- Certain rules that used to require a province-wide referendum to be changed can also be changed following a resolution of a general meeting, such as the Law Society's annual general meeting.
- The Benchers now have a full year to implement resolutions of general meetings, rather than six months, and a province-wide referendum to compel the Benchers to do so will require a petition of 5% of the members, rather than 100 members.

Legal Profession Act ... from page 12

the lawyers within them.

"We indirectly regulate firms through lawyers right now, but it's awkward – it's not transparent and in some cases not effective," said Jeff Hoskins, QC, tribunal and legislative counsel for the Law Society, who led the society's efforts to have the legislation amended. "We say 'all lawyers must do this.' They can rely on their firm to do it, but it's their responsibility in the end."

Just how the Law Society will regulate firms has yet to be determined. Over the coming months, the Law Society expects to complete the necessary work to develop new rules designed to provide appropriate guidance to law firms. The profession can also expect a significant communication effort around the changes.

"This is an important development," reported Deborah Armour, chief legal officer of the Law Society. "Our goal is to reduce the number of complaints in the first place. If we can look to firms to share in the responsibility of ensuring an ethical and competent profession, we will be taking a much more proactive approach to regulation as opposed to simply reacting to problems through our complaints process."

When it comes to investigations and discipline, the ability to regulate firms may assist the Law Society in situations where it isn't always clear who is responsible for firm-wide activities, such as marketing or trust accounting. "We don't yet know the specifics of how this will be done, but having the ability to regulate the law firm makes it more incumbent on the firm, itself, to abide by the rules," added Michael Lucas, the manager of policy and legal services who, among other staff, also worked behind the scenes on the new act.

CHANGES PROVIDE FOR MUCH IMPROVED INVESTIGATIONS AND DISCIPLINE

The amended act will now give the Law Society the power to require people other than lawyers to answer questions and produce records.

How the legislation was passed

THE LAW SOCIETY is grateful to the members of the legislature who offered their support for the bill and, in particular, Attorney General Shirley Bond. Also instrumental were outgoing Deputy Attorney General David Loukidelis, QC, Assistant Deputy Minister Jay Chalke, QC, and the ministry staff who worked with the Law Society on the draft legislation – particularly staff from the Civil Policy and Legislation Office, Legislative Counsel and the Justice Education Law Group.

Prior to introduction of Bill 40, the society consulted with MLAs on both sides of the house to ensure they were aware of how the requested amendments proposed to improve the Law Society's ability to protect the public interest.

The bill received first reading on April 30, 2012 with the following introductory comments by Attorney General Shirley Bond.

> I am very pleased to introduce the *Legal Profession Amendment Act, 2012*. The bill will amend the existing *Legal Profession Act* and create a new modernized act.
>
> These amendments have been requested by the Law Society of British Columbia, which has worked in close partnership with ministry staff in the development of this legislation. The amendments affirm that the protection of the public interest is the paramount purpose and mandate of the Law Society of British Columbia.
>
> This change will modernize the Law Society's budgeting process and bring it in line with the vast majority of regulatory bodies….
>
> The Law Society of British Columbia believes that these amendments will make British Columbia a leader in Canada in the regulation of the profession of law.

Second reading of the bill, which occurred on May 3, 2012, featured comments by the opposition critic of the Attorney General, Leonard Krog.

> The bill, as the Attorney General has announced, makes a number of changes, all positive, all done in fairly lengthy consultation over a long period of time with the Law Society of British Columbia and with a fair bit of input….
>
> Some of the changes may appear somewhat subtle, but they are in fact important. One of the things that I would mention is the existing legislation, the existing *Legal Profession Act*, with respect to the object and duty of the society….
>
> It emphasizes, very clearly, the responsibility that has been given to the Law Society by legislation and makes it absolutely clear, crystal-clear, to the public that there is not some conflicting duty to protect, to regulate the practice of law and to uphold and protect the interests of its members. There is not some conflict there. The paramount object and duty of the society, the clear object and duty of the society, is to "protect the public interest in the administration of justice."

Further comments were provided by MLA Bill Bennett who, like Krog, is also a lawyer. "In conclusion, these improvements to the *Legal Profession Act* will improve public confidence in BC lawyers and will enable stronger oversight by the Law Society of British Columbia. But it is important for me as a lawyer to say that generally, lawyers serve their clients very effectively and with very few complaints from the public, as my friend from Nanaimo said."

The bill received third and final reading on May 9, 2012, was passed without amendment and became law on Royal Assent on May 14, subject to some provisions that will come into effect by regulation.

"In carrying out an investigation, we were able to compel the cooperation of the lawyer through the rules, but previously there was nothing we could do with a client who didn't want to comply," said Hoskins. "Now, the Law Society can require people who are not lawyers to disclose documents and give sworn evidence."

Another important development relates to discipline while investigations are ongoing.

"Our goal is to reduce the number of complaints in the first place. If we can look to firms to share in the responsibility of ensuring an ethical and competent profession, we will be taking a much more proactive approach to regulation as opposed to simply reacting to problems through our complaints process."

– Deborah Armour, Chief Legal Officer

"Significantly," added Armour, "where it is necessary to protect the public, three or more Benchers now have the authority to suspend a lawyer or place conditions on a lawyer's practice while an investigation is ongoing, rather than having to wait for a disciplinary hearing. This gives us the statutory authority to protect the public interest in extraordinary circumstances."

There will also be a change to how medical examinations are handled. Now, three or more Benchers can order a lawyer to undergo a medical examination before there is a citation. This replaces the section that required the investigation to be complete before the Law Society could require such an examination.

"That's important," said Hoskins, "because it takes a medical issue, which often involves mental health concerns, out of the discipline process and puts it where it more properly belongs in the investigative stage."

PUBLIC INTEREST CLEARLY PARAMOUNT

As the regulating body of lawyers, it is already the Law Society's responsibility to act in the public interest. But section 3 also said the society had a duty to "uphold and protect the interests of its members."

"Public interest is no longer paramount – it is *the* thing," said Hoskins, "which makes our mandate consistent with most other professions in BC. Our mandate is no longer two-tiered, in terms of weighing the public interest against the interests of lawyers. This change is intended to demonstrate to the world that this is a public interest body, and we don't have the object of advancing the interests of lawyers, except to the extent that we do so by supporting them in meeting their requirements in the practice of law."

There are now five things that the Law Society must do:

- preserve and protect the rights and freedoms of all persons;
- ensure the independence, integrity, honour and competence of lawyers;
- establish standards and programs for the education, professional responsibility and competence of lawyers and of applicants for call and admission;
- regulate the practice of law; and
- support and assist lawyers and articled students in fulfilling their duties in the practice of law.

PRACTICE FEE TO BE SET BY BENCHERS INSTEAD OF BY VOTE OF MEMBERS

One of the other important changes to the Act is to the process of setting the annual practice fee.

Previously, lawyers had the opportunity to vote on the practice fee, which in the normal course occurred through voting at the annual general meeting on a resolution containing a fee recommended by the Benchers. Under the new Act, the Benchers will set the fee.

This change will improve the timing of the Law Society's budgeting activities and will also remove the regulatory conflict created by allowing the regulated members to determine the funding of their regulatory body. The change also brings the Law Society in line with the vast majority of regulatory bodies and all other Canadian law societies.

For his part, President LeRose is confident that this legislation will bring positive change for both the public and lawyers.

"Our mandate is no longer two-tiered, in terms of weighing the public interest against the interests of lawyers. This change is intended to demonstrate to the world that this is a public interest body, and we don't have the object of advancing the interests of lawyers, except to the extent that we do so by supporting them in meeting their requirements in the practice of law."

– Jeff Hoskins, QC, Tribunal and Legislative Counsel

"This is a bit of a watershed, it's a new modern era," said LeRose. "We've had 14 years of experience with the *Legal Profession Act*. We knew where the weaknesses were and we've watched the rest of the world to see what the trends are and what tools other regulatory bodies are using. We're confident these changes will help us provide the best protection we can for the public and help support lawyers in meeting the public interest."❖

Jeff Hoskins, QC

Deborah Armour

Michael Lucas

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, which include:

- 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.

CR #2012–08

This conduct review addressed a lawyer's conduct in failing to properly maintain his books and records in accordance with Part 3, Division 7 of the Law Society Rules. During a compliance audit, it was observed that the lawyer had:

- deposited client retainers directly into his general account prior to all the work being completed, instead of his pooled trust account as required by Rule 3-51,
- failed to maintain a duplicate receipt for cash received, contrary to Rule 3-61,
- failed to reconcile his trust accounts in accordance with Rule 3-65, and
- failed to maintain all his required accounting records in accordance with Rule 3-68.

The subcommittee reviewed these rules and their role in protecting the public interest. The lawyer completed the Small Firm Practice Course and explained the changes he had made to ensure compliance with the Rules.

CR #2012-09

The conduct review was ordered following a compliance audit that revealed a lawyer had accepted an aggregate of cash of $7,500 or more on one client matter over a period of approximately two years. The lawyer acknowledged he was aware of Rule 3-51.1, but had forgotten an earlier payment he received in 2008. The lawyer advised he had changed his practice and no longer accepts cash.

CR #2012-10

This conduct review arose from complaints made in two different matters. On one matter, a lawyer sent an email to approximately 600 recipients, of whom over 100 were clients. In doing so, the lawyer disclosed confidential client information, because the names of clients and their email addresses were accessible to all the recipients. The lawyer further failed to protect confidential information by disposing of a binder of client materials in the courthouse garbage following a fee review. The lawyer also threatened to issue a second, higher bill, if the client commenced a review, which the subcommittee advised was inappropriate conduct.

On the second matter, the lawyer ceased to act for a client on a contingent fee basis on a personal injury matter. He then sent a bill for an amount approximately two-thirds of the estimated value of the claim, but the contingency fee agreement did not specify any basis for billing if the lawyer ceased to act. The lawyer explained that his bill was an estimate, and he intended to settle the account when the claim was settled. However, he did not tell the client that when he sent the bill. The lawyer also failed to prepare the client for discovery and to communicate to the client who would attend with him. The subcommittee reminded the lawyer of the importance of clear and timely communication with clients.

The subcommittee observed a pattern of impulsive responses by the lawyer, both to clients and to the Law Society. Some of these responses were inaccurate, which the lawyer explained was due to a heavy workload. The lawyer was referred to Practice Standards.

CR #2012-11

The conduct review addressed a lawyer's conduct in assisting a client to breach a term of a consent order issued under s. 67 of the *Family Relations Act,* by arranging for the execution and registration of a mortgage against the client's interest in the matrimonial home. This mortgage secured the lawyer's fees. The lawyer was unaware of the order because it was made at a judicial case conference that her articled student attended. The lawyer did not review the file prior to instructing the preparation of the mortgage. She acknowledged that she had, in effect, counselled her client to breach the consent order. Prudence and good practice required the lawyer to carefully review the file when re-assuming conduct of it. She should further have immediately discharged the mortgage when asked to do so by opposing counsel.

CR #2012-12

This conduct review was ordered in respect of a lawyer's involvement in a fraudulent scheme. A long-time friend induced him to enter into a joint business venture, through which the friend perpetrated a fraud. The lawyer played a role by affixing his barrister and solicitor seal on documents used in the fraud. His seal was not required, but gave an appearance of authenticity and credibility to the documents. The subcommittee advised that, when a lawyer becomes involved in a business with others, he must be on guard to ensure that he is not used to mask or facilitate inappropriate conduct. The lawyer ought to have paid much more attention to the business, the way it was being conducted, and the use of his seal. His involvement, however inadvertent, reflected poorly on the entire legal profession. It was contrary to the Canons of Legal Ethics set out in Chapter 1 of the *Professional Conduct Handbook* and to Chapter 2, Rule 1 of the Handbook, which requires that a lawyer not engage in dishonourable or questionable conduct that casts doubt on his professional integrity or competence or reflects adversely on the integrity of the legal profession, regardless of whether that conduct occurs in the lawyer's private life, extra-professional activities or professional practice.

CR #2012-13

A lawyer appeared before the subcommittee to discuss concerns about the quality of service he provided to his client in two foreclosure matters, including his delay in advancing the interests of his client and acting in an apparent conflict of interest. The subcommittee reviewed the facts with the lawyer and the apparent pattern of inattention and lack of timely action, particularly his delay in responding to communications from clients and other lawyers. The subcommittee also discussed the conflict of interest that arose when the lawyer acted in a foreclosure matter for three defendants in which, if the mortgage were found invalid, the interests of the defendants would have been directly adverse because two defendants would have a third party claim against the other defendant. Further, the lawyer had not obtained any formal waiver or acknowledgement in writing to act jointly for the defendants, as required by Chapter 6, Rule 4 of the *Professional Conduct Handbook*. The subcommittee strongly recommended that the lawyer avail himself of remedial resources, including professional development courses focussing on time management, client relations, practice management and ethics.

CR #2012-14

The conduct review addressed a lawyer's failure to pay a practice debt in a timely manner. Chapter 2, Rule 2 of the *Professional Conduct Handbook* requires lawyers to meet professional financial obligations incurred or assumed in the course of practice, including the fees or charges of witnesses, sheriffs, registrars and court reporters. The lawyer did not pay the cost of a transcript until 18 months after it was incurred, but did pay it prior to the Discipline Committee ordering the conduct review.

CR #2012-15

The conduct review arose from a lawyer's failure to respond to another lawyer's correspondence. He represented the executor of an estate, and failed to respond to six inquiries made over a two-month period by counsel for a person with a potential claim under the *Wills Variation Act*. Chapter 11, Rule 6 of the *Professional Conduct Handbook* requires lawyers to respond promptly to any communication from another lawyer that requires a response. The subcommittee also cautioned the lawyer about his use of intemperate language, when he responded to the complaint to the Law Society by stating the allegations were "spurious."

CR #2012-16

A lawyer breached an undertaking he gave to the Law Society as a condition of admission that he would not practise as a sole practitioner. He complied with the undertaking for several years, then his law partner left, leaving him to practise alone. His breach was discovered during a compliance audit. The subcommittee stressed that his undertaking was a solemn promise that he must scrupulously honour, despite the passage of time. By the time of the conduct review, the lawyer had remedied the situation and was practising as an associate. The lawyer acknowledged that he had breached his undertaking.

CR #2012-17

A lawyer appeared before the subcommittee to discuss her five-month delay in endorsing a court order in a family matter regarding the sale of the matrimonial home and custody of the children. Her client was retaining new counsel, and the lawyer wrongly believed that she was entitled to endorse the order and return it to the client's new lawyer. The subcommittee reminded the lawyer of her professional obligation to promptly endorse and return the order, regardless of her personal circumstances or her client's instructions. The lawyer also failed to respond to at least seven communications from opposing counsel regarding the status of this order. On two occasions, the lawyer appeared to have assured opposing counsel that the order would be endorsed and returned promptly, when it appeared she had no intention of doing so. Her failure to respond to opposing counsel's letters and to do so in a forthright manner was a breach of her professional obligations.

CR #2012-18

The conduct review arose from a lawyer's conduct in a summary trial application, in which he made submissions that called into question the integrity of opposing counsel and suggested that counsel was misleading the court. The court found that there was no evidentiary basis for the lawyer's statements. The subcommittee reminded the lawyer of Rule 4(1) of the Canons of Legal Ethics that requires a lawyer's conduct towards other lawyers be characterized by courtesy and good faith. Conduct that offends this expectation rarely assists the client in litigation. The lawyer agreed that he needed to choose his words carefully, and to err on the side of caution. If he had concerns about another lawyer's conduct, he would discuss them with the lawyer before making allegations.

CR #2012-19

The conduct review focussed on two bills rendered by a lawyer. The lawyer became involved on behalf of his clients in a discussion about the preparation of a new will for the mother of one of the clients, but he never prepared the new will. The mother later commenced a civil action to recover money she had provided to the clients, which they asserted was a gift. At that time, the clients paid the lawyer a retainer for the purpose of defending the civil action, but he was unable to act on their behalf due to a conflict. However, the lawyer issued a bill purportedly for preparation of wills, then withdrew the retainer from trust to pay that bill. Several months later, the clients disputed the bill and asked for return of the retainer. The subcommittee advised the lawyer that his conduct was improper because he had paid this bill from funds expressly paid for another specific purpose, contrary to Rule 3-57(7). Further, the bill did not provide a reasonably descriptive statement of the legal services and $75 was allocated to disbursements that were not itemized. This bill did not satisfy the requirements of s. 69 of the *Legal Profession Act*.

The lawyer subsequently testified in the civil action. He told the defendants' counsel of the amount of conduct money required for his attendance, which was paid to him. However, he later sent another bill at his regular hourly rate for the time away from his office while testifying. The subcommittee explained that he ought to have discussed fees for attendance at the time the conduct money was discussed. Further, when he issued the bill for his witness fees, it appeared to be retaliation against the clients, because it was issued shortly after they asked for the return of their retainer funds. The subcommittee reminded him of the importance of handling trust funds in accordance with the Rules and ensuring that his billing practices met the requirements of the Act and Rules. ❖

Credentials hearing

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

For the full text of hearing panel decisions, visit the Hearing reports section of the Law Society website.

MICHAEL GRANT GAYMAN

Vancouver, BC
Called to the bar: May 12, 1980
Ceased membership: January 1, 1996
Disbarred: May 6, 1999
Hearing (application for reinstatement): December 16, 2011
Panel: David Mossop, QC, Chair, Paula Cayley and James Dorsey, QC
Report issued: April 24, 2012 (2012 LSBC 12)
Counsel: Henry C. Wood, QC for the Law Society and Richard Lindsay, QC and Colleen O'Neill (articled student) for Michael Grant Gayman

Michael Grant Gayman was disbarred by a hearing panel in May 1999 for conduct unbecoming a lawyer. While acting as a trustee, Gayman knowingly breached a trust agreement resulting in a loss of approximately $1 million dollars to 20 investors.

Gayman testified that, at the time of the breach, he was a heavy drinker. After he ceased to practise law, he attempted various other jobs; however, his drinking continued. His second marriage also ended due to his alcoholism.

Gayman reached a turning point in his life in April 2003 when he entered a Salvation Army detox program. He gave up drinking alcohol and also became a Salvation Army employee. Moving up the corporate ladder in this organization, he held various managerial positions. In July 2010, he accepted the newly created role as director of labour relations and was responsible for 180 people.

Gayman intentionally disconnected from other lawyers when he was disbarred. However, in 2006 he decided he wanted to "give back" and contacted the Lawyers Assistance Program, which assists people who are dealing with substance abuse. He was later appointed as a director on two related boards.

In the panel's view, the two major concerns in considering this application for reinstatement were Gayman's breach of trust and his alcohol dependency.

An expert medical report stated that procrastination and poor judgment go hand in hand with alcoholism. The panel believed alcoholism may have played a significant part in Gayman's breach of trust, cover-up and his failure to respond to the Law Society and the investors.

It has been over 10 years since Gayman was disbarred from the practice of law. He had a serious alcohol dependency and has dealt with it effectively for nine years. The panel determined that a sufficient period of time had elapsed to demonstrate change and character and fitness to practise law.

Although Gayman's breach and cover-up were serious, the panel believed that these mistakes were isolated and not part of a pattern of professional misconduct or conduct unbecoming. His conduct record was generally clean and the panel felt that it was highly unlikely that he would misconduct himself again.

Gayman worked for the Salvation Army for over eight years with a great deal of managerial responsibility. He also provided letters from senior lawyers attesting to his good character.

The confidence of the public in the legal profession was an important consideration for the panel. In the panel's view, the public would not have confidence in the legal profession if Gayman was not given a second chance.

The panel found that Gayman was a person of good character and repute and was fit to be a lawyer. His application for reinstatement is subject to strict conditions that he:

- comply with all of the recommendations made in his 2008 medical report;
- continue to consult with one designated physician on a regular basis;
- regularly attend a mutual support group and maintain contact with an AA sponsor;
- ensure monitoring reports are submitted to the Law Society annually or immediately if there is any concern of substance abuse;
- not operate a trust account or be a signatory upon one;
- practise law only in a setting approved by the Law Society and report any significant change in his employment situation; and
- have a workplace supervision agreement with a co-worker of equal or higher status.

As Gayman has not practised law for almost 17 years, he will have to satisfy the requirements set out in Rules 2-55 to 2-59 before he is formally admitted into the practice of law.

It was of some significance that Gayman had no specific plans to practise law. The panel decided that a decision on the issue of reinstating Gayman as a non-practising member was not necessary. The conditions addressed the concerns of the panel.

The panel emphasized that alcoholism is no defence to a disciplinary matter nor an excuse on a readmission application. This was an exceptional case and should not be used by disbarred lawyers to gain reinstatement.

On May 10, 2012 the Credentials Committee resolved to refer the matter to the Benchers for a review of the decision, under section 47 of the *Legal Profession Act*.❖

Discipline digest

BELOW ARE SUMMARIES with respect to:

- John Skapski
- Glenn John Niemela
- Roger Roy Plested
- Rico Rey Hipolito
- Wallace Moon Wong
- John Lyndon Decore
- Douglas Warren Welder
- David William Blinkhorn – addendum

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

JOHN SKAPSKI

Richmond, BC
Called to the bar: September 10, 1981
Discipline hearing: September 14, 2011
Panel: David Renwick, QC, Chair, Rita Andreone and Jan Lindsay, QC
Oral reasons: September 14, 2011
Report issued: February 16, 2012 (2012 LSBC 08)
Counsel: Carolyn Gulabsingh for the Law Society and Richard Fernyhough for John Skapski

FACTS

John Skapski acted for a client who was the owner of a commercial fishing licence. Such licences are vessel-based, and the client had agreed to "lease" the licence to two people for the 2001 season. The Department of Fisheries and Oceans does not permit temporary transfers of vessel-based licences; therefore, a complex scheme of transfers and agreements was entered into. Skapski's client transferred the fishing licence to the other parties and received one of the shares of title to their vessel.

The fishing licence was never intended to be owned by the other parties, nor was the share in their vessel intended to be owned by the client. As security for the return of the respective licence and vessel, transfer back documents were executed. These documents were not dated or filed, but instead were held in trust by Skapski.

In 2004, one of the other parties declared bankruptcy and did not list the fishing licence as an asset in the bankruptcy. In 2009 the vessel was seized along with the licence. Skapski advised the bailiffs that his client continued to own the licence. Skapski located a replacement vessel for the licence and then dated and filed with the Department of Fisheries and Oceans the transfer of the licence, which had been executed (but not dated) in 2001.

Skapski said that this complicated series of transactions was the only way to effect a lease of a commercial fishing licence that he was aware of at the time. He had not considered and did not appreciate that he was in breach of the *Professional Conduct Handbook*.

ADMISSION AND DISCIPLINARY ACTION

Skapski admitted that his conduct in dating and affixing his signature in 2009, to a document solemnly declared before him in 2001, constituted professional misconduct.

The panel stated that lawyers have a duty to scrupulously adhere to the formalities of swearing affidavits, because to do otherwise would have grave repercussions. Allowing this conduct to go uncensured would harm the standing of the legal profession. Documentary evidence sworn before lawyers would lose its value if scrupulous adherence to rules of swearing such documents was not practised.

In this case, general deterrence is a factor, although specific deterrence is not, as Skapski has already developed a new protocol to deal with this type of scenario that does not offend Law Society rules and does satisfy the Ships Registry.

The panel took into consideration that Skapski had been called to the bar 30 years ago and did not have a professional conduct record. He had corrected his practice and, while the consequences of his conduct are not insignificant in that all documents sworn before lawyers need to be accurate and reliable, no harm resulted from his misconduct in this case.

The panel accepted Skapski's admission and ordered that he:

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

GLENN JOHN NIEMELA

Vancouver, BC
Called to the bar: August 26, 1988
Discipline hearing: January 24, 2012
Panel: Patricia Bond, Chair, Dr. Gail Bellward and William Sundhu
Oral reasons: January 24, 2012
Report issued: February 17, 2012 (2012 LSBC 09)
Counsel: Alison Kirby and Carolyn Gulabsingh for the Law Society and Henry Wood, QC for Glenn John Niemela

FACTS

A complaint was made against Glenn John Niemela on May 24, 2011. As part of the Law Society's investigation, a letter was sent to Niemela on July 11, 2011 that required a response. When no response was received, a second letter was sent on August 22. Niemela telephoned the Law Society on August 30 and apologized for the delay; however, he did not formally respond to the complaint. The Law Society followed up again in September. In October, Niemela was cited for failing to respond to the Law Society, contrary to Chapter 13, Rule 3 of the *Professional Conduct Handbook*.

On January 16, 2012, one week prior to the discipline hearing, Niemela responded in writing to the Law Society's inquiry.

ADMISSION AND DISCIPLINARY ACTION

Niemela acknowledged that the appropriate finding in this case is one of professional misconduct and that he had an obligation to respond to the

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Law Society in a timely manner. He explained that the circumstances of his workload played a major factor in his failure to respond, but did not present those circumstances or any others as an excuse for his behaviour.

In the panel's view, an aggravating factor was the delay of 24 weeks for Niemela to respond to the Law Society's initial request.

The panel took into consideration Niemela's professional conduct record, which reflects a pattern of delay and procrastination. The panel urged Niemela to take the steps necessary to address any underlying issues that have contributed to this citation.

The panel stated that the need for general deterrence commanded a disciplinary action that reflected the seriousness of the offence, particularly in light of Niemela's disciplinary record. Failure to reflect that seriousness appropriately risks erosion of the public's confidence in the ability of the Law Society to regulate the conduct of its members.

The panel accepted Niemela's admission and ordered that he pay:

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

ROGER ROY PLESTED

Kamloops, BC
Called to the bar: May 15, 1974
Discipline hearing: November 16, 2011
Panel: Thelma O'Grady, Chair, David Crossin, QC and Nancy Merrill
Report issued: February 23, 2012 (2012 LSBC 10)
Counsel: Carolyn Gulabsingh for the Law Society and Roger Roy Plested on his own behalf

FACTS

In February 2009, Roger Roy Plested acted on behalf of the executor of an estate in the sale of property. The property was subject to encumbrances, including a mortgage and a *Strata Property Act* lien.

On February 27, Plested sent executed documents for completion of the sale of the property along with a letter imposing undertakings on the lawyer representing the purchaser. He also gave an undertaking that he would provide clear title to the property on receipt of the sale proceeds.

Beginning in May, the purchaser's lawyer sent several faxes to Plested regarding the discharges of the mortgage and lien. Plested did not respond to these communications.

On July 10, the closing date, the purchaser's lawyer wrote to Plested imposing trust conditions on which the proceeds of sale would be provided to Plested, including obtaining discharges of a mortgage and a lien in a timely manner and payment of outstanding property taxes.

The transfer of the property occurred on July 10. On July 21, Plested received notification that sale proceeds had been deposited into his trust account. On July 24, Plested notified the purchaser's lawyer by phone that he had hand-delivered a cheque for payment of the lien.

On September 25 and October 30, the purchaser's lawyer wrote to Plested to advise that the lien and mortgage still appeared on title and that he had not received confirmation that the mortgage had been discharged. Plested did not reply to these letters.

On November 9, the purchaser's lawyer wrote to Plested advising that his client was selling the property. The closing date was November 20, 2009 and Plested's immediate attention to the outstanding undertakings was required. Plested did not reply to this letter.

Between November 20, 2009 and January 6, 2010, Plested attended to the outstanding undertakings, including discharges of the mortgage and lien. However, he did not provide the purchaser's lawyer with any evidence the mortgage had been paid out or discharged.

The Law Society was appointed as custodian of Plested's practice by order of the Supreme Court on July 9, 2010.

ADMISSION AND DISCIPLINARY ACTION

Plested admitted that he breached the trust conditions imposed by the purchaser's lawyer in failing to obtain the discharges of the mortgage and lien. He also admitted that he failed to respond reasonably promptly or at all to communications from the other lawyer. He agreed that such conduct constituted professional misconduct.

Plested stated that he was diagnosed with a major depressive disorder in April 2009 and prescribed ever-increasing doses of anti-depressant medication.

Plested was referred to the Practice Standards Committee as part of penalty conditions ordered by a hearing panel in 2007. That hearing panel found that Plested repeatedly failed to respond to clients and the Law Society. The committee determined that the state of his practice had worsened, as had his depressive disorder.

Plested is currently on an undertaking not to practise law until his psychiatrist certifies that he is capable of functioning adequately to meet basic competency levels.

Plested advised the panel that he had experienced substantial improvement in his condition. However, he had not yet had the psychiatric assessment completed as he did not feel he was ready to return to the practice of law and also could not afford the cost of the assessment. He stated that he had no income for 2010 and 2011 and no prospects of any income for at least another year.

In making its decision on disciplinary action, the panel considered the seriousness of the offences, including the fact that giving and fulfilling undertakings are the cornerstone of the legal profession and that breach of an undertaking is a very serious matter. The panel also considered Plested's ongoing medical condition, the fact that he gained no advantage by his conduct, his financial circumstances, his age, and his limited professional prospects.

The panel accepted Plested's admissions and ordered that he pay a $3,500 fine within 18 months of the order.

RICO REY HIPOLITO

Vancouver, BC
Called to bar: May 14, 1993
Suspended from practice: October 28, 2008
Ceased membership: January 1, 2010
Admission accepted by Discipline Committee: April 12, 2012
Counsel: Alison Kirby for the Law Society and Jean Whittow, QC for Rico Rey Hipolito

FACTS

Rico Rey Hipolito was a sole practitioner and his practice was primarily in the area of immigration law. In his 2006 and 2007 trust reports, he stated that he did not maintain any trust accounts to receive, disburse or hold trust funds.

On October 21, 2008, the Law Society scheduled a compliance audit of Rey Hipolito's practice; however, he was not present when the auditor arrived. The Law Society notified Rey Hipolito that he was required to produce and permit the copying of his records by October 28. When Rey Hipolito did not comply, he was immediately suspended under Law Society Rule 3-79.1.

Rey Hipolito arranged for another lawyer to manage his practice. On March 5, 2009, the court appointed the Law Society as custodian of his practice.

The Law Society investigated several allegations against Hipolito:

In 2004, Rey Hipolito received a flat fee of $2,700 for an immigration-related sponsorship application and visitor's visa application for a client and her mother. He failed to ensure the applications were filed with Citizenship and Immigration Canada, and he incorrectly advised his client on the status. In 2007, the client made her own inquiries and found out that Rey Hipolito had not filed the applications. Rey Hipolito did not respond to her emails. He also failed to handle the money received in accordance with trust accounting rules.

In 2006, Rey Hipolito promised to repay a client $6,000 in fees after the client's judicial review of the dismissal of an application for permanent residency was dismissed. When the funds had still not been received in 2008, the client made a complaint to the Law Society.

In 2008, Rey Hipolito took a flat fee of $2,500 to represent a client who wanted to sponsor her husband for permanent residence. He did not provide the services nor deliver a bill to the client, but rather used those funds for personal purposes. He also misappropriated $1,040 that was given to him in trust to pay Citizenship and Immigration Canada filing fees. Rey Hipolito misled the client as to the status of her application. In January 2009, he responded to the client's email about the delay in processing the application, but did not disclose that he was suspended. The client made a complaint to the Law Society after Rey Hipolito sent her a bank draft for $1,040 in February 2009.

In 2009, Rey Hipolito gave legal advice and accepted $1,000 payment for his services when he was suspended from practising law. The client later checked "Lawyer Look-Up" on the Law Society's website and saw that a custodian had been appointed over Rey Hipolito's practice. She then contacted the custodian for information and assistance. The Law Society contacted Rey Hipolito and he admitted that he had accepted a retainer and confirmed that he knew that he was not allowed to practise.

ADMISSIONS AND DISCIPLINARY ACTION

Rey Hipolito admitted to professional misconduct for:

- failing to serve clients in a conscientious, diligent and efficient manner so as to provide a quality of service at least equal to that which would be expected of a competent lawyer in a similar situation;
- treating flat fee funds from clients as his own when he had not performed the services and had not billed his client;
- failing to repay the $6,000 he agreed to refund to his client;
- failing to file applications and misleading clients as to the status of the applications;
- misappropriating $1,040 paid by a client in trust; and
- not disclosing to clients that he was suspended from the practice of law and not referring those clients to the lawyer who had assumed conduct of his practice.

Under Rule 4-21, the Discipline Committee accepted Rey Hipolito's admissions on his undertakings:

1. not to apply for reinstatement to the Law Society for a total of eight years ending on June 3, 2017;
2. during that period, not to apply for membership in any other law society without first advising the Law Society of BC; and
3. not to permit his name to appear on the letterhead of any lawyer or law firm or otherwise work in any capacity whatsoever for any other lawyer or law firm in BC without the prior written consent of the Law Society.

WALLACE MOON WONG

Richmond, BC
Called to the bar: September 13, 1983
Discipline hearing: February 6, 2012
Panel: Thelma O'Grady, Chair, Glenys Blackadder and John M. Hogg, QC
Oral reasons: February 6, 2012
Report issued: May 4, 2012 (2012 LSBC 15)
Counsel: Carolyn Gulabsingh for the Law Society and Henry Wood, QC for Wallace Moon Wong

FACTS

Wallace Moon Wong acted for a client in divorce proceedings. Wong had to prepare an affidavit and financial statement, a sworn document to be completed by each party in a divorce action. Wong's client was out of the country at the time, and he instructed his associate to prepare what he called a "take-out affidavit."

Before the financial statement was prepared, and on the instructions of Wong, the associate sent the client the document with the jurat blank. Once the financial statement was completed, the associate administered the oath over the phone. The client then sent the signature page back to Wong's associate where the jurat was completed with the date of swearing being the day the associate administered the oath over the phone. The "sworn" or signature page was then inserted into the completed financial statement.

The facts in the financial statement were correct, but the jurat and body of the financial statement were done separately. Most importantly, the client was never physically present before the lawyer to allow the lawyer to see the client personally sign and to be able to properly satisfy the requirements of swearing an affidavit.

There had been other occasions when Wong took this approach to affidavits. This was corroborated by the fact that he had a special name for the procedure, "take-out affidavit."

The *Professional Conduct Handbook* specifically states that a lawyer must not swear an affidavit or take a solemn declaration unless the deponent

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"is physically present before the lawyer." Wong stated in a letter that he was not aware of this requirement and that he considered it proper for the associate to complete the jurat of an affidavit when the well-known deponent had not signed the affidavit in her actual physical presence, but had sworn it was true over the phone.

ADMISSION AND DISCIPLINARY ACTION

Wong admitted that his conduct constituted professional misconduct.

The panel found Wong's conduct serious and a clear breach of his professional responsibility. On the other hand, the panel took into consideration that lengthy discipline proceedings were not required since Wong admitted the facts at an early date.

Although Wong's conduct had occurred before, it was not prevalent. The facts and figures set out in the financial statement in this case were apparently accurate in every respect, even though the client's oath was taken in a wholly inappropriate manner.

The panel also took into consideration Wong's age and his professional conduct record, which included one conduct review for an unrelated issue. Wong gained nothing from his "take-out affidavit" procedure, and no harm was suffered by any person as a result of his actions.

The panel accepted Wong's admission and ordered that he pay:

1. a $3,500 fine; and
2. $3,000 in costs.

JOHN LYNDON DECORE

Edmonton, Alberta
Called to the bar: August 28, 1992
Suspended: April 8, 2010; ceased membership: January 1, 2012
Discipline hearing: March 23, 2012
Panel: Gregory Petrisor, Chair, Linda Michaluk and Dale Sanderson, QC
Oral reasons: March 23, 2012
Report issued: May 17, 2012 (2012 LSBC 17)
Counsel: Alison Kirby for the Law Society and John Lyndon Decore on his own behalf

FACTS

John Lyndon Decore failed to complete and certify completion of his 2009 continuing professional development requirements. As a result, the Law Society suspended him on April 8, 2010.

On April 8, 2010, the Law Society sent a letter to Decore advising him of the suspension. He wrote to the Law Society in December 2010 using a different return address than the one on record with the Law Society.

Between December 2010 and August 2011, the Law Society sent several letters to Decore at one or both addresses. The letters initially requested a reply regarding his 2009 and 2010 continuing professional development requirements and also asked if he had engaged in the practice of law since his suspension. He was later notified, in writing, that the matter had been referred for possible disciplinary action. Decore did not respond to any of this correspondence.

On January 1, 2012, Decore ceased being a member of the Law Society for non-payment of his annual fees.

ADMISSION AND DISCIPLINARY ACTION

At the hearing, Decore admitted receiving at least some of the letters the Law Society sent to him. He admitted that he did not respond to that correspondence.

Decore did not challenge the allegation of professional misconduct and gave evidence of his personal circumstances from 2010 through to early 2012. He stated he did not want to make excuses for not responding to the Law Society's communications.

In light of the repeated attempts by the Law Society to elicit a response from Decore, his prolonged and unexplained failure to respond and his admissions, the panel concluded Decore's conduct constituted professional misconduct.

While it seemed apparent that Decore was not engaged in the traditional practice of law on behalf of clients, he was nonetheless subject to the normal obligations of all lawyers. The failure to respond to communications from the Law Society could harm the public's perception of the Law Society's ability to effectively regulate lawyers.

In the panel's view, Decore's failure to respond to Law Society correspondence over an extended period of time, offering no explanation prior to the hearing, and an administrative suspension for failing to complete continuing professional development requirements, were aggravating factors.

The panel considered the fact that Decore acknowledged the misconduct and did not gain any advantage from it as mitigating factors.

The panel accepted Decore's admission and ordered that he:

1. pay a $2,000 fine;
2. pay $2,500 in costs; and
3. provide a written and substantive response to the Law Society's letters.

DOUGLAS WARREN WELDER

Kelowna, BC
Called to the bar: May 12, 1981
Discipline hearing: April 27, 2012
Panel: Tony Wilson, Chair, William Jackson, QC and David Chiang
Oral reasons: April 27, 2012
Report issued: May 17, 2012 (2012 LSBC 18)
Counsel: Carolyn Gulabsingh for the Law Society and Douglas Warren Welder on his own behalf

FACTS

In October 2007 and December 2008, the Canada Revenue Agency (CRA) registered two certificates in Federal Court for debts owed by Douglas Warren Welder.

Between February 2009 and April 2010, the Law Society sent numerous letters to Welder inquiring about the amount of taxes owing. He did not reply to any of the correspondence until April 5 and May 31, 2010 when he wrote that he had to obtain the figures from CRA. On June 11, 2010, Welder advised the Law Society of the amount of taxes he owed.

In January 2011, the Law Society notified Welder that his failure to communicate with the Law Society regarding taxes owed to CRA, as well as his failure to comply with the order of a 2007 review panel, would be referred for possible disciplinary action. The Law Society invited Welder to provide a proposal to satisfy the CRA judgments. He did not respond to the Law Society.

In the 2007 review panel decision, Welder was suspended from practice for three months and ordered that, upon his return to practice, he provide the Law Society with monthly proof that he had remitted the social services tax due. After Welder returned to practice, the Law Society wrote to Welder on four occasions requesting proof of payment of the social services tax for the period ending December 31, 2009. On February 5, 2010, Welder provided proof he had paid the social services tax and on April 5, 2010 he finally provided the GST return and proof of payment.

ADMISSION AND DISCIPLINARY ACTION

The obligation to immediately notify the Law Society of an unsatisfied monetary judgment is part of a lawyer's professional responsibility.

Welder failed to respond substantively to seven letters from the Law Society between February 2009 and January 2011. His conduct was ongoing, repeated and occurred over a period of approximately 20 months. The panel believed that his actions were obstructionist in nature.

Welder's conduct was similar concerning his failure to provide a proposal to satisfy the judgments. He had also failed to respond to Law Society inquiries about a proposal to satisfy the CRA judgments. He was offered a final chance to provide a proposal in January 2011 and again failed to do so.

Welder has a professional conduct record that includes five conduct reviews and five prior citations. The pattern of misconduct, particularly when combined with an admission of failure to comply with the provisions of an earlier review panel decision, strike at the ability of the Law Society to perform its core function, which is to regulate lawyers in the public interest.

Welder gained an advantage from the misconduct by failing to prove to the Law Society that his payments to CRA were current. He had the benefit of use of the funds he had collected for taxes but which had not been remitted.

The panel was also troubled with Welder's comment during the hearing: "I am hopeful that I will change my behaviour," which is not the same as "I will change my behaviour."

Welder conditionally admitted that his conduct in respect of both allegations constituted professional misconduct. The panel accepted his admissions and ordered that he:

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

Dissenting opinion (Chiang)

Panel member David Chiang disagreed with the disciplinary action, as it was not within the range for repeated and frequent misconduct. He believed that Welder's lengthy history of professional misconduct, his lack of contrition, and the number of times the offending conduct occurred should be taken into account. In Chiang's view, a suspension greater than the range for first instances of failure was warranted.

DAVID WILLIAM BLINKHORN – ADDENDUM

The following is an addendum to the discipline digests in the Summer 2010, Fall 2010 and Fall 2011 *Benchers' Bulletins*.

BACKGROUND

David William Blinkhorn admitted, and the panel found, that he had committed professional misconduct. The panel further found that he breached the Law Society Rules in failing to keep proper trust accounting records.

The panel ordered that Blinkhorn be disbarred and pay $37,000 in costs.

TRUST PROTECTION COVERAGE

The BC legal profession provides financial protection to members of the public whose money has been stolen by a lawyer. If a claim is made against a lawyer relating to the theft of money or other property, Trust Protection Coverage is available under Part B of the lawyer's insurance policy to reimburse the claimant, on the lawyer's behalf, for the amount of the loss.

Based on the circumstances described in paragraph [3](9) of *Law Society of BC* v. *Blinkhorn*, 2009 LSBC 24, a Trust Protection Coverage claim was made against David William Blinkhorn and the amount of $224,154 paid. This is in addition to the claims previously reported in the Summer 2010, Fall 2010 and Fall 2011 digests. Blinkhorn is obliged to reimburse the Law Society in full for the amounts paid under Trust Protection Coverage.

For more information on Trust Protection Coverage, including what losses are eligible for payment, see Lawyers > Insurance on the Law Society's website at lawsociety.bc.ca.❖

Practice Watch ... from page 11

Fraud Alerts (www.lawsociety.bc.ca/page.cfm?cid=402) includes the following information:

- Bad cheque scam (including list of ruses);
- Names and documents (includes names and documents used in BC);
- Common characteristics and red flags;
- Twists and developments
- What to do if you suspect a new client may be a scamster
- Steps to manage the risk;
- Report actual or possible trust fund shortages.

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.❖

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