The Law Society of British Columbia

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BENCHERS' BULLETIN

Keeping BC lawyers informed

Focusing on efficiency, engagement and innovation

by Don Avison, QC

IN THEIR SEPTEMBER meeting, the Law Society's governing board of Benchers approved a budget that will maintain annual practice and indemnity fees at the same levels for 2022 as they were in 2020 and 2021. Keeping fees the same for a third consecutive year, while continuing to fulfill our core regulatory function, is no small feat. It is the result of prudent fiscal measures implemented in response to the pandemic, and the dedicated, creative staff of the Law Society who challenge themselves to continually improve service delivery.

A shining example of this has been the Lawyers Indemnity Fund (LIF). Liability coverage protects the public by compensating clients who suffer loss as a result of professional negligence. In 2022, the fee a lawyer will pay for indemnity coverage has been set at $1,800 — the same as it was in 2017, and only $50 more than when the fee was introduced in 1986. What is even more impressive is that LIF has managed to enhance coverage, adding Part B (theft) and cyber coverage to the compulsory indemnification policy. Lawyers in Ontario and Alberta pay over $3,000 a year for similar or even less coverage.

While LIF has been blazing a trail, other departments of the Law Society have been taking steps of their own to innovate and improve efficiency and effectiveness. As reported to the Benchers, we managed to avoid a projected deficit for the current year. Several initiatives we are working on now and in 2022 are aimed at sustaining what we have achieved. We are reviewing regulatory processes, including alternatives to discipline as recommended by the Mental Health Task Force. We are developing information technology to improve user experience of our intake process and in the areas of member services and practice advice. We have begun offering new and existing professional development courses on an online learning platform.

The latest and one of our most important courses is the Indigenous intercultural course that the Law Society has been developing in response to the Truth and Reconciliation Commission's call for lawyers to be trained in Indigenous intercultural competency. At the end of September, the Law Society made the course available and invited lawyers to preview the course before it is formally launched. Within hours of publishing the invitation, we were contacted by over 400 lawyers who asked to participate, and several hundred more have emailed us since.

Another area where the Law Society has been able to expand some of our activity without adding to costs is through our use of virtual platforms to engage with lawyers and the public. In June and July, the Access to Justice Advisory Committee hosted a series of town hall meetings to hear ideas for making legal services more available and more affordable. While the focus of these sessions was changes within the power of the regulator to make, the Law Society shared several ideas with the legislative committee conducting virtual hearings for the next provincial budget. The Law Society also helped deliver online sessions to discuss practical strategies and advice for addressing mental health challenges that many in the profession experience. The *Rule of Law Matters* podcast wrapped up its first season, with work now underway on season two. These new media have allowed the Law Society to expand how and when we communicate, to reach new audiences and to be more responsive.

In a world where we often have to do more with less, the Law Society can point to these initiatives and efforts as ways we are finding to do better. Looking beyond the pandemic, we continue to work toward our vision to be a leading regulator that promotes innovation and inclusivity and responds to current challenges and opportunities in the delivery and regulation of legal services. I look forward to continuing to update you on our progress. ❖

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

Electronic subscriptions to the *Benchers' Bulletin* and *Member's Manual* amendments are provided at no cost.

Issues of the *Bulletin* are published online at www.lawsociety.bc.ca (see About Us > News and Publications).

Mental Health Task Force recommends alternative discipline process

THE BENCHERS ADOPTED the Mental Health Task Force's recommendations that call for the development of an alternative discipline process (ADP) as a regulatory response for circumstances where a lawyer's conduct issue is linked to a health decision.

An innovative and proactive approach to professional regulation, the proposed ADP would be part of the Law Society's strategic goal of revising regulatory processes to support and promote mental and physical health while continuing to uphold the public interest, by encouraging lawyers to address underlying health issues that may impact their ability to meet professional responsibilities. At its core, the proposed ADP would be voluntary, confidential and designed to customize the regulatory response in circumstances where a lawyer's conduct issue is linked to a health condition.

The proposed alternative discipline process will be developed and is expected to be implemented in September 2022, when it will be piloted over three years. At the conclusion of the pilot, the Benchers will make a final determination as to whether to establish it as a permanent regulatory program.

Further information about the proposed model, including the ADP's guiding principles and key design features and a consideration of the policy issues engaged by creating an ADP in British Columbia, are available on our website.❖

2021 Mental Health Forum

MORE THAN 600 attendees gathered virtually for the Mental Health Forum hosted by the Law Society and the Continuing Legal Education Society of BC (CLEBC) on September 14, 2021 to listen to experts share practical strategies and advice for advancing mental health within the legal profession.

To launch the forum, lawyers Ian D. Aikenhead, QC, Orlando Da Silva and Sandra L. Kovacs shared powerful personal stories of their experiences addressing a mental health issue while maintaining a law practice. Each spoke about how they initially tried to ignore the issues and push forward focusing on their work, before overcoming fears of stigma so that they could seek support. They all shared how they experienced hope after receiving professional help.

Following these inspirational stories, attendees had the option of participating in one of two separate sessions to hear about mental wellness strategies and initiatives in the context of large law firms or small and medium law firms. While the firm size context differed, panellists from both sessions spoke to creating a culture of mental well-being by building personal connections, holding frequent and consistent individual check-ins with staff and lawyers, fostering open communication and making it a psychologically safe space for people to bring their true selves to work.

Other strategies they shared included hosting a monthly lunch speaker on mental wellness, providing mental health first aid training and creating and following a value statement for the organization.

Participants also heard from counsellors and human resources professionals who provided insights on contributing to culture change, incorporating self-care, becoming aware of activities that replenish or deplete energy, setting boundaries and positive thinking. They also offered useful tips on what to do when a colleague discloses a mental health condition and how to support a colleague on leave for a mental health issue. Derek LaCroix, QC, executive director of the Lawyers Assistance Program, invited everyone to join the movement to create a culture of health and well-being in the profession.

Recordings of the forum sessions are available on CLEBC's website. If you have any feedback or ideas on the Law Society's mental health initiatives, contact mentalhealth@lsbc.org.❖

Law Society COVID-19 vaccination policy

AT THE LAW Society, the health and safety of our employees, volunteers and visitors remains a high priority. As such, we are implementing a vaccination policy in order to protect our employees and everyone who visits the Law Society. As of December 6, 2021, we will require that anyone wishing to enter our workspaces must provide provincially-issued proof of vaccination. From that date, visitors who have meetings or other business at the Law Society are asked to go to our 8th floor reception, where staff will verify proof of full vaccination before permitting access to our workspaces.

We appreciate that this is an extraordinary measure, but it is one we consider necessary. Information presented to confirm vaccination status will not be collected or stored.

We thank you in advance for your cooperation.❖

Non-adversarial dispute resolution in family law matters

IN JANUARY 2021, the Access to Justice Advisory Committee was tasked with exploring how the Law Society might advocate for greater use of non-adversarial dispute resolution in family law matters. The goal of advocating for increased access to non-adversarial dispute resolution in family law matters is part of the Law Society's strategic plan, adopted by the Benchers as reported last December.

At their October meeting, the Benchers adopted 11 of 12 recommendations of the Access to Justice Advisory Committee, including collaborating with medical and other experts to continue research and raise awareness of adverse childhood experiences (ACEs) and to encourage greater access to non-adversarial alternatives for resolving family law disputes.

In the early part of this year, the advisory committee conducted research and consulted with those having expertise about the effects ACEs have on developing brains and long-term health of children embroiled in adversarial family law disputes. Research has shown that adversarial family disputes not only can cause ACEs but often exacerbate existing ACEs. The data, when considered alongside the long-recognized belief that adversarial family law dispute resolution can be harmful to those involved, requires the Law Society, lawyers, government, courts and other justice stakeholders to recalibrate how family disputes are resolved in order to minimize harm and promote well-being.

The advisory committee also met with, and benefitted from the perspective of, representatives of the Canadian Bar Association, BC Branch. They spoke to the commitment of the bar and efforts that members have been making toward using collaborative approaches where possible, but also to managing higher conflict cases in adversarial processes to avoid or mitigate ACEs. Their input is reflected in the advisory committee's recommendations.

Those recommendations include the Law Society aligning its policy development with the efforts of others to reform family justice services based on data about ACEs and to explore policy development and communication with stakeholders, policy-makers and the public about a number of aspects of ACEs and the benefits of alternatives to adversarial processes. The recommendations also call on the Law Society to work with government and key justice stakeholders, as well as consult and collaborate with professionals in health and social services fields, to support a multidisciplinary approach to helping families resolve family disputes.

The report and recommendations of the advisory committee are available on our website.❖

Articled students working conditions and remuneration

FOR SOME TIME, concerns have been raised about unpaid and underpaid articles. Following a 2015 study of working conditions for articled students by the Lawyer Education Advisory Committee, the Benchers encouraged principals to ensure reasonable remuneration and committed to further steps to ensure future policy decisions in this regard are evidence-based.

At the Law Society's 2020 annual general meeting, members in attendance passed a member resolution directing the Benchers to address issues related to working conditions of articled students by ensuring that articling agreements are consistent with section 16 and Parts 4 and 5 of the *Employment Standards Act*. While section 13 of the *Legal Profession Act* provides that a member resolution is non-binding on the Benchers, the Lawyer Development Task Force was given the assignment of considering the member resolution and making recommendations to the Benchers.

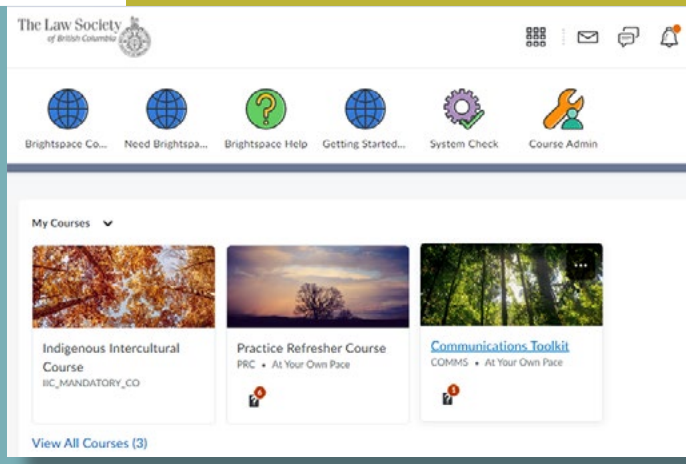
Over the past year, the task force has been conducting a comprehensive, evidence-based examination of articled students' wages and hours of work. It has analyzed a large body of survey data and evaluated the potential implications of various approaches to addressing concerns related to these issues. Many of the rationales for establishing standards for mandatory levels of compensation and limits on hours of work during articles are unified by themes of ensuring fairness and preventing exploitation, which are matters that the Law Society can address through its regulatory powers.

The task force presented its report to the board in October, and the Benchers endorsed in principle establishing standards for hours of work and minimum financial compensation levels during articles. The Law Society will consult further with the profession as it develops a specific formula or method for calculating the new standards and identifies circumstances under which employers and students may be eligible for discretionary exemptions. Specifics of the new standards for hours of work and remuneration will be referred to the Benchers by the Fall of 2022 and 2023, respectively.

To address any concerns about a potential reduction in articling positions, and in an effort to ensure that any new standards do not create other additional barriers to licensing, the Benchers resolved that the new standards will not be implemented until at least one alternative to articling as a pathway to licensing is in place.

The full report and recommendations of the Lawyer Development Task Force are available on our website.❖

Law Society piloting Indigenous intercultural course



The Law Society has begun piloting its Indigenous intercultural course. In September, we invited stakeholders to test the functionality of the learning platform and provide feedback on the education modules. Any BC lawyer who also wishes to volunteer to preview the six-hour course is welcome to be part of the pilot.

All participants in the pilot will be eligible for credits toward fulfilling annual professional development requirements. Email indigenous@lsbc.org to sign up for access to the online learning platform.

The Indigenous intercultural course has been developed to fulfil the Law Society's commitment to implement the Truth and Reconciliation Commission's Call to Action 27, that law societies require Indigenous intercultural competency of lawyers. When the course is officially launched, it will be mandatory for practising lawyers in BC, who will have up to two years to complete all modules.

For more information about the initiative, visit our website.❖

Expanding legal services through the Law Society's innovation sandbox

IN AN EFFORT to improve the availability of affordable legal services that meet the needs of British Columbians who are underserved in the current marketplace, the Law Society has authorized individuals who are not lawyers to offer limited legal services within a monitored environment. Since the innovation sandbox was launched, approval has been given to proposals for legal research and coaching by paralegals and others, as well as joint proposals from law firms and service providers to expand services to reach a clientele where it is not cost-effective for lawyers to deliver. It has also approved in principle a teaching law firm that would serve as an experiential learning centre for articled students and an incubator for legal practitioners.

The approved proposals are from:

- Jane DePaoli – legal services and coaching to assist individuals with organizing documents, navigating procedure, preparing mediation briefs, and research in the area of family law, providing lawyer referrals where appropriate.
- Michelle Haigh – legal advice and services to individuals who need assistance for their small claims disputes.
- Tracy Laninga – legal services and coaching to start-ups applying for grants and completing annual corporate documents, as well as to individuals applying for legal aid and specific government programs, or who need assistance for small claims, CRT and simple tenancy disputes, or obtaining a desk order (uncontested) divorce.
- Jeremy Maddock – legal research and document drafting for practising lawyers, and legal services to assist individuals who are disputing violation tickets.
- John McDonald – legal advice and services to individuals who need assistance for small claims, CRT, residential tenancy, and employment standards disputes.
- Larry Smyth – legal advice and services to individuals who need assistance for traffic, residential tenancy, small claims and CRT disputes.
- Samfiru Tumarkin LLP – employment law advice and legal services provided by Courtney Burnett.
- Spraggs & Co. Law Corporation – human resources consulting and legal services provided by Rachel Rabinovitch.
- Access Pro Bono: Everyone Legal Clinic – a virtual public interest legal clinic that would train and support new law school graduates in developing public interest law practices to provide affordable legal services to underserved communities across the province. The Law Society has approved the idea in principle and is committed to working with Access Pro Bono on the specific details and requirements of the proposal.

The scope of legal services they are authorized to provide are set out in "no-action" letters that are available on the Law Society's website. The pilots will be monitored by the Law Society through regular reporting. For more information about approved proposals and how to submit a proposal, visit the Innovation Sandbox.❖

2021 annual general meeting

THE LAW SOCIETY held its annual general meeting on Tuesday, October 5, 2021. Led by President Dean Lawton, QC, the proceedings were conducted virtually. Lawton reported on progress made to advance the Law Society's strategic plan over the past year. The agenda also included consideration of five resolutions. Lawyers eligible to vote on the resolutions were given the option to do so online in advance or through polling during the meeting.

Resolutions seeking changes to the Member Portal and Lawyer Directory regarding pronouns and forms of address and to appoint the Law Society auditors for 2021 were passed. A member resolution regarding Supreme Court of BC Practice Direction 59 and the Provincial Court's Notice to the Profession 24 was defeated, as were two Bencher resolutions that required two-thirds approval to amend rules regarding member resolutions.

"The results of the annual general meeting affirm the direction that the Law Society has been taking to ensure inclusion and respect of all members of the public and the legal profession," said Lawton. "The board of Benchers and Law Society staff will look more closely at Resolution 2 as we consider the next steps to take in the implementation of our Diversity Action Plan."

For full details of the AGM results, go to Annual General Meeting.

The following resolutions were passed:

Resolution 2: Member resolution regarding pronouns and forms of address

	Advanced voting	In-meeting votes	Total votes	%
In favour	2,125	95	2,220	69.1%
Opposed	977	17	994	30.9%
Total votes	3,102	112	3,214	

Resolution 3: Appointment of Law Society auditors for 2021

	Advanced voting	In-meeting votes	Total votes	%
In favour	2,768	85	2,853	98.0%
Opposed	54	3	57	2.0%
Total votes	2,822	88	2,910	

The following member resolutions were defeated:

Resolution 1: Member resolution regarding Practice Direction 59 and Notice to the Profession 24

	Advanced voting	In-meeting votes	Total votes	%
In favour	1,368	47	1,415	42.1%
Opposed	1,869	79	1,948	57.9%
Total votes	3,237	126	3,363	

Resolution 4: Benchers' resolution to require at least 50 signatures for a member resolution to be considered at an annual general meeting

	Advanced voting	In-meeting votes	Total votes	%
In favour	1,889	11	1,900	59.3%
Opposed	1,214	90	1,304	40.7%
Total votes	3,103	101	3,204	

Resolution 5: Benchers' resolution to provide the president the authority to determine whether a member resolution is reasonably related to the mandate or responsibilities of the Law Society or the Benchers, or to the regulation of the legal profession

	Advanced voting	In-meeting votes	Total votes	%
In favour	1,378	13	1,391	46.1%
Opposed	1,546	80	1,626	53.9%
Total votes	2,924	93	3,017	

Law Society submission on 2022 provincial budget consultation

THE LAW SOCIETY appeared before the Legislative Assembly's Select Standing Committee on Finance and Government Services to present recommendations that may inform the 2022 provincial budget. The Law Society's submissions were made by First Vice-President Lisa Hamilton, QC and focused on increasing eligibility and coverage for legal aid, as well as expanding broadband Internet in rural and remote regions to ensure access to legal services and courts. The standing committee also heard deputations from Aleem Bharmal, QC, on behalf of the Canadian Bar Association, BC Branch, River Shannon, on behalf of Pacific Legal Education and Outreach Society, and Jennifer Metcalfe, executive director of Prisoners' Legal Services.

Following prepared remarks from each of the organizations, members of the standing committee engaged the panellists in further dialogue about issues affecting the justice sector and legal services delivery that were raised in their submissions. The Hansard transcript of the Law Society's submission and extracts from the dialogue are featured below.

L. Hamilton: Good morning, everybody. I am Lisa Hamilton. Thank you for inviting me to speak on behalf of the Law Society. I am a family law mediator, lawyer and arbitrator in Vancouver. I'm also on the governing board of the Law Society, and I will be president next year. It is in that capacity that I speak to you today.

The Law Society regulates the legal profession in the public interest. Our core mandate and function is set out in section 3 of the *Legal Profession Act*. It calls upon us to protect the public, promote the rule of law and uphold the public confidence in the administration of justice. These duties require us to speak on behalf of others who have a stake in the justice system who are unable to speak for themselves or to be heard.

The Law Society has prepared written submissions that will be filed for your benefit. They will address more than I intend to cover here today in the allotted time. I would just like to highlight three of the recommendations for you today.

First, we have recommended extending further funding for upgrades to technology and infrastructure in court and court services. The last budget included a one-time allocation for this work, but we recommend that the work proceed. It's not completed yet. Much appreciate the allocation, but more work to be done.

Secondly, we recommend that the budget include an increase in legal aid that expands who is eligible to qualify for legal aid, an expansion of the scope of legal services that are covered by legal aid and an increase to the coverage limits. Many British Columbians who struggle to earn a living wage are still viewed as too rich to qualify for legal aid, and many of those who do qualify find that their legal aid runs out before their problem is actually resolved, which can actually be quite dangerous.

Thirdly, I'd like to highlight that we are recommending an allocation of funding to enable an exploration of expanding non-adversarial resolution of family law matters in particular.

If I can just expand on two of the items that I have mentioned today. First, prioritizing provincial funding on broadband technology in rural and remote communities. We appreciate that broadband Internet is often not thought of as a justice issue. However, with the transformation of the courts and court services that is underway and changes that lawyers and law firms have implemented during the pandemic, these have made virtual and online platforms a norm in the delivery of legal services in this short time.

As such, the Internet is making legal services more available and more affordable than ever before, which is a good thing. British Columbians who need help with a legal problem can more easily obtain advice and representation, and they're more easily able to participate in processes affecting them. I see this daily in my private practice. This can help the public resolve their issues earlier, feel that justice has been served and move on with their lives.

The changing nature of how legal services are delivered now, how justice is accessed, creates an opportunity for better fairness and equality of opportunity for everyone who has access to virtual and online platforms. However, in consultations that the Law Society did this summer, we heard that some British Columbians living in rural and remote communities are being left out because of unstable and unreliable Internet.

The province allocates funding to improve broadband, and no doubt will continue to do so. The Law Society encourages this to be a priority, because investments in broadband connectivity have returns and benefits for access to justice for all.

Now if I can just turn to expand on the non-adversarial alternatives in family law disputes. The adversarial process promotes winners and losers. Family law clients will often have an ongoing relationship with the other party. The classic example is co-parenting children.

There have been lots of great changes to family law funding, but still, the majority of the funding is directed at adversarial services. Now, with the ability of online mediations and so forth making it safer to participate in mediations, for example, we suggest that more exploration be done to fund non-adversarial processes in family law.

B. Stewart (Deputy Chair): Lisa, you mentioned it in your presentation, about the fact that the investment in the court system…. It sounds like it was more at the courthouse rather than the access that's needed out in maybe rural parts of British Columbia, where people can present

continued on following page

Submission on budget … from previous page

without having to travel to a particular facility. Two of you mentioned — and I'm sure you're all touching on it — about technology.

Is that correct? What do you see…? Or could you maybe more completely describe the issue around the technology gap? I know that we're not going to have high-speed Internet at every rural location in British Columbia. I know that it has been a long-standing priority of government, and the rules keep changing, and speeds keep going up, etc. Anyway, could you just elaborate?

L. Hamilton: It's partly what happens in court, because the courts are — I think this is a really good thing — moving towards virtual and online processes.

The CBA had a report. Aleem Bharmal will talk about that. We reached out to people. They described great benefits in terms of cost savings and not having to travel to court to appear, for their clients to be able to appear from distances and be more able to participate. But there are still people that don't even have the basics, so they cannot participate in all these great changes that are happening.

That's true with private practice as well. I've noticed since the pandemic that there's a huge need for mediation and arbitration in family law, for example. The public really wants to resolve their matters quickly and not be dragging on and not having matters unresolved. But the unfortunate thing — this, I guess, combines with the recommendations on legal aid and expanding the scope — is that you worry about people being left behind if they don't have access to technology, they're not technologically savvy or they can't afford to pay for lawyers who can help them navigate that.

My practice has expanded. I now offer services around the province without having to fly to communities, and those who can pay for it greatly benefit from getting their matters resolved. It's such a safe way to do it as well, because you can be on this very technology and use breakout rooms and not even have people where there's family violence being in the same place.

It seems to me that it would be the fairest to make that accessible to everyone as opposed to those who can pay for it or those who happen to be able to qualify for limited services. I hope that answers your question.

B. Stewart (Deputy Chair): What I was trying to get at is the financial component of this. You mentioned about the hubs, Aleem, and I think that that's probably a more realistic approach. I don't know if the courts are completely set up with the amount of the one-time funding or if there's a big gap there. That's what I'm trying to separate.

I realize it's kind of an incremental thing. If we have the courts set up and we can deal with different courts, whether it's family law or other issues — the idea that people can access it. I guess what I'm trying to do is…. What type of ask do you think is needed?

A. Bharmal (CBABC): Yeah, these things have to be costed, I think, in consultation with the Ministry of Attorney General. But if there's a will to go forward with it and a recognition of the need, then the costing can be done with the Attorney General, with different levels of service, and it can be worked into the budget.

We just want to emphasize that this should be a priority. To have a just society and to include Indigenous communities within that, we need that capability.

L. Hamilton: If I may add… I like when Aleem suggests the hubs. Perhaps partnering with courthouse libraries or First Nations band offices, somewhere where people who don't have Internet at home and may not be able to use it — don't have the skills — and can have that facilitated.

M. Starchuk: Was this an evolution that was coming, or is it as a result of the pandemic and adapting to what was there?

L. Hamilton: … If I may. I see that it was already happening in a very small way, but the pandemic really gave it a push. I saw lawyers, mediators, arbitrators who would not normally offer their services really jump to it.

Within the span of two weeks, everything changed drastically. Private practice looks very different. The courts really came aboard too. I'm on the Supreme Court rules committee, and I've done work for the Provincial Court as well.

One of the programs that, as a result of the pandemic, there has been funding for, is pro bono mediation, which is a virtual mediation project, which has been fantastic. I know River has helped train the mediators. That's up and running to support the Provincial Court family rule changes, which have mediation up front. It's a collaborative effort with the family justice centres as well as Access Pro Bono and Qase technology and the government. That's been wonderful.

All of that, I think, has been pushed by the pandemic. I do worry that there's even more. I think the pandemic has been very hard on families and relationships, and I worry. I lose a little bit of sleep myself that there's going to be even more delay and backlog.

We're all going to have to roll up our sleeves and help families resolve matters more quickly. So I think the use of technology and turning more and more to options for non-adversarial processes to resolve matters more quickly, where that can be done in a safe manner, is a real opportunity for us to look at to help British Columbians.

L. Doerkson: … I just wanted to appreciate the comments about connectivity throughout rural British Columbia, particularly because — I'm certainly from the Cariboo Chilcotin — I can definitely confirm that it is a massive issue. So I'm glad that that's a topic this morning.

[Lisa] talked about legal aid and the thresholds. We've heard that this morning, and if you gave a threshold, I didn't hear it. What is the threshold where you are disqualified for legal aid, and what does legal aid look like to somebody that is going to use it? Is there a maximum amount that they can receive? Are there thresholds there as well?

J. Routledge (Chair): Lisa?

L. Hamilton: Off the top of my head, I don't know the exact…. They change it from time to time, but it's very, very low income — lower than subsistence level.

In family law, as Aleem had alluded to, there is coverage if you can prove that

there is an urgent need. For example, there are women who are exposed to family violence and are in desperate need of protection orders. They may qualify for an emergency protection order and obtain that, only to then find that that is it for the coverage. So the rest of their legal issues, such as securing child support, spousal support, parenting arrangements, parenting schedule — anything to do with beyond the actual emergency — can be out of scope, out of coverage.

That's a real concern, because if someone is brave enough to come forward and to obtain a protection order, the period of danger for that woman for the six months after separation is the highest. She has mentioned that she's in a violent relationship, taken those steps, put herself in a very vulnerable stage, only to not have any help, going forward.

There's a report by the Rise Women's Legal Centre that was recently done that highlights this as a real issue, and there have been other reports as well. So it's a real concern.❖

Federation of Asian Canadian Lawyers documentary

THE FEDERATION OF Asian Canadian Lawyers BC (FACL BC) is premiering a mini-documentary, "But I Look Like a Lawyer," on Friday, November 5, 2021 from 12:30 to 1:30 pm at a virtual event. Guest speakers will include Law Society President Dean Lawton, QC and Jennifer Chow, QC, who chairs the Law Society's Equity, Diversity and Inclusion Advisory Committee.

All members of the legal community, from law students to senior members of the bar, are welcome to attend.

You can register for the launch event, watch the FACL BC trailer and learn more about the documentary on the FACL BC website. This event will be eligible for one hour of CPD credit.

FACL BC would appreciate your support in shedding light on the issue of discrimination, stereotyping and bias experienced by members of the pan-Asian legal community.❖

From the Law Foundation of BC

GRANTEE HIGHLIGHT

The Migrant Workers Centre (MWC), formerly the West Coast Domestic Workers' Association, was established in 1986 with the goal of providing dedicated legal advocacy for migrant workers in BC. The Law Foundation has been supporting this non-profit organization's important work for over 30 years.

Over the past 35 years, MWC has increased access to justice for migrant workers through legal education, advice and full representation services. Its primary areas of service are in the fields of immigration and employment law. MWC now supports migrant workers to address over 2,200 matters each year. In addition to providing individual services, MWC also works on a systemic level to advance fair immigration policy and improved labour standards for migrant workers through law and policy reform and test case litigation.

Over the past 18 months, the COVID-19 pandemic has added to the insecurity faced by many migrant workers. MWC was able to rapidly shift its service delivery model to provide much-needed legal support over the telephone, Zoom and WhatsApp, and has ensured that migrant workers have access to relevant legal information materials during this unprecedented time.

GRADUATE FELLOWSHIPS

The Law Foundation will issue up to six Graduate Fellowship awards of up to $17,000 for the 2022- 2023 academic year.

Applicants must be either:

- a graduate of a British Columbia law school;
- a member of the BC bar;
- a current student of, or planning to attend at the time of their fellowship, a graduate program at UBC or University of Victoria law school (with the exception of a graduate program whose purpose is to provide National Committee on Accreditation equivalency to practise law in Canada); or
- a resident of British Columbia. For the purposes of the fellowships, a resident of BC is anyone who is a permanent resident of Canada and either currently resides in BC or has been a resident of BC for a significant portion of their life.

To be eligible, applicants must devote themselves primarily to their full-time graduate studies in law or a law-related area. A current recipient of a Legal Research Fund grant from the Foundation is ineligible to receive a Graduate Fellowship.

The complete funding notice can be found at www.lawfoundationbc.org/project-funding/graduate-fellowships.

Applications can be made at https://lawfoundationbc.smartsimple.ca/. All material must be included in your application and submitted no later than midnight on **January 7, 2022.**❖

PRACTICE ADVICE, *by Barbara Buchanan, QC, Practice Advisor*

Fraud 101 for lawyers

FRAUD IS A serious risk in every type of practice, regardless of firm size, a lawyer's year of call or practice area. Lawyers, lenders, insurers, clients and other parties can all be victims. The impacts of the pandemic only add to the potential risk. Lawyers who are isolated, are struggling in their practice or have serious financial issues may be especially vulnerable to manipulation by fraudsters.

There are many types of fraud that can affect lawyers. This article discusses the more common frauds and provides tips to help you recognize them.

COMMON FRAUDS AND ILLEGAL ACTIVITY

Lawyers should guard against the following common frauds and illegal activity:

- social engineering scams;
- ransomware attacks and data breaches;
- law firm employee theft;
- investment and banking scams; and
- real estate fraud.

First are social engineering scams, such as the bad cheque scam, a phony change in payment instructions or a phony direction to pay. With these scams, the lawyer or law firm is usually the target of a fraudulent diversion of funds to the scammer.

Second are ransomware attacks, a frequent and successful cyber crime. With these scams, the lawyer or law firm's computer systems are hacked and confidential data is held for ransom by the criminal.

Third is law firm employee theft. In this case, the employee is usually stealing money from the law firm.

Fourth are situations where the scammer (who may be your client) often intends to scam an innocent third party on the other side of a transaction or claim and involve you in the scheme (however, in some situations a third party is part of the scam in cahoots with your client). These include investment and banking scams or real estate fraud. The scammer may want to involve you to lend credibility to their scheme or because they actually need legal services for some aspects of their plan.

For criminals, coming up with new schemes and looking for unsuspecting victims and vulnerabilities to exploit is a full-time job. They are willing to target anyone, including lawyers they can dupe into becoming unwittingly involved in a dishonest, illegal or fraudulent scheme. Take care to comply with the law and your other professional responsibility obligations.

Here is some information about each of these scams to help you identify them.

SOCIAL ENGINEERING SCAMS: THE LAWYER AS VICTIM

The bad cheque scam

In this scam, a scammer pretends to be a new client who needs legal services that lawyers commonly provide. In reality, they do not actually require legal services, and they are not who they say they are. Their goal is to have a lawyer deposit a phony certified cheque, bank draft, credit union official cheque or money order into a trust account, and then trick the lawyer into electronically transferring the funds to the scammer before the lawyer finds out that the instrument was worthless.

The scammer may use the same name as a real person (whether posing as an individual client or as an individual providing instructions on behalf of a company) or a legitimate organization that is not

part of the wrongdoing. They may present government-issued photo ID that may be stolen, altered or fake. The documents that scammers use to support a ruse may include collaborative divorce agreements, settlement agreements, pleadings, court orders, invoices, bills of lading, loan documents, promissory notes, contracts, letters and photos of injuries or damage.

This scam came to BC around 2012 and remains very active. Examples of some ruses that scammers have used to try to fool BC lawyers are:

- collecting on amounts owed pursuant to a collaborative divorce agreement, a private loan, an unpaid invoice or a settlement agreement;
- purchase and sale of a business;
- purchase and sale or lease of large equipment or vessels;
- wrongful dismissal claim;
- dog bite or slip-and-fall claim;
- breach of a licence agreement;
- private mortgage;
- real estate conveyance;
- retainer overpayment and refund.

The bad cheque scam: Red flags

Some phony clients provide convincing documents. They may portray themselves as sophisticated business professionals (sometimes as an officer of a well-known company) or as beleaguered victims. Here are some characteristics that can act as red flags:

- The initial contact with you is often by email and the individual may use a free web-based address (e.g., Gmail, Hotmail, Yahoo).
- Sometimes your name is in the salutation; however, because the message is commonly crafted to cast a wide net, you may receive an email addressing you more generally, such as "Dear Counsel," "Good day" or "Dear Attorney" (they often use the American term *Attorney*, sending the emails to lawyers in the United States too).
- The individual usually claims to reside in another jurisdiction, sometimes temporarily (e.g., "on assignment" or tending to a sick relative).
- The initial email often says that a person who owes them money "resides in your jurisdiction" (again using a generic term to cast a wide net, because they may be sending the same email to lawyers in Canada, the United States, Australia, England, etc.).
- The individual usually requires simple services — often just a demand letter — and the money arrives quickly, sometimes before you have received a retainer and verified the client's identity.
- The individual may try to elude the verification process and try to convince you to accept a scan of a government-issued photo ID.
- The individual may be overly familiar with the need to check for conflicts, verify identity and provide a retainer.
- The individual may be willing to pay you too much for little work.
- You receive a realistic looking but phony certified cheque (or other instrument that you believe is secure) from the opposite party in an envelope with no return address or one that doesn't make sense.
- After you receive the money in trust (usually six figures or more), the client wants you to send the funds quickly, before you learn the instrument is no good. They tell you to pay your account out of the funds in trust.

Avoid becoming a bad cheque scam victim

How do you protect yourself from the bad cheque scam?

- Learn to identify the scam by becoming familiar with the ruses and red flags.
- Review the bad cheque scam names page to see some of the many names and ruses that scammers have used to try to trick BC lawyers (includes an A to Z alphabetical list).
- If you take on a new client and there is a financial transaction, identify and verify the client's identity and obtain information about the source of money for the transaction in accordance with Part 3, Division 11 of the Law Society Rules. Ask questions if there is anything unusual or suspicious and record the answers to your inquiries with the applicable date (*BC Code* rule 3.2-7 and commentary). If you are not satisfied with the results, withdraw (Rule 3-109).

Phony direction to pay: Change in payment instructions

Another social engineering scam that may target you and your trust account is a phony change in payment instructions scam with respect to an existing file. In this situation, unlike the bad cheque scam, the client is who they say they are, at least in the beginning. However, along the way, a scammer learns about the timing of an expected payment to your client, and sends you a convincing email redirecting the funds to them. Believing the email is from your client, you transfer funds to the scammer and create a trust shortage. Below are some examples of how this can happen:

- You act for a client with respect to a wrongful dismissal claim. You receive legitimate funds in trust from your client's former employer for settlement of a claim. The scammer, assuming your client's identity, instructs you via email to wire the settlement funds to an account that the scammer will access. Further emails from you go to the scammer instead of your client. Often your client's email address and the scammer's email address are similar but with one small change that could easily be missed (e.g., one letter or number different). The scammer may set up email rules so that all emails between you and the client (even with the client's correct email address) are redirected to the scammer. The scammer may also telephone your firm or invite the firm to call the number in the scammer's email.
- On the other hand, a scammer may assume your identity. The client or a third party (e.g., a solicitor acting for another party to the transaction) who is sending you money for a matter (e.g., money for a conveyance) receives an email that tells them to wire the funds to the scammer's account, rather than to your trust account. By the time you find out that you never received the funds, the money is long gone.

BC law firms have fallen victim to phony change in payment instructions scams and

faced hundreds of thousands of dollars in trust shortages, which they are professionally obligated to replace. If you are about to pay out trust funds and you receive new or changed payment instructions electronically from your client, assume that a hacker is impersonating your client behind the scenes. *Stop*, and ensure that the new or changed instructions are legitimate by making in-person or phone contact with your client. Remember to use the number that your client or the third party initially provided to you, not a number provided in the email, for any telephone contact, and follow the tips found here. Not only will this help you to avoid a trust shortage, but it is also a condition of your firm's new cyber coverage.

Phony direction to pay from within your law firm

This social engineering scam is similar to the phony change in payment instructions scam. In this scheme, scammers usually pose as individuals working in your own law firm. The scammer "spoofs" another lawyer's or staff member's email address (may be senior accounting staff), to make it appear that the email was from the individual whose name is displayed in the "From" line. Sometimes an imposter, knowing a lawyer is on vacation, uses the information on the pretext that the vacationing lawyer is unable to perform the task while away. The ruses vary, but commonly the scammer asks the recipient of the email (usually a more junior lawyer or other staff member) to transfer funds from trust to a client or to purchase gift cards for a client from the firm's general account. Conversely, in some cases, scammers pose as clients who are away on holidays and who ask lawyers or staff to purchase a series of gift cards as a favour and email the gift card information to the scammer.

If you receive an email direction to pay from someone at your law firm, double-check by speaking with the individual. Contact the staff member or other lawyer in person or by phone to confirm that they actually sent the direction. Do not rely on the telephone number in the email. Consult your staff directory. If your accounting staff's names and contact information are on your website, consider removing them from public view. Once a scammer knows a staff member's name, it is easy to figure out their email address, because every address will presumably have the same domain name (e.g., @buchananandco.com).

General tips to protect yourself from social engineering scams

In addition to the information above about protecting yourself from the bad cheque scam, a phony change in payment instructions or a phony direction to pay, consider these additional general tips:

- Be on high alert for scams during holiday periods or at other times when your full complement of staff may not be in their normal office routine (like during a pandemic). These times provide opportunities for criminals to take advantage.
- If you have doubts about the client or the subject matter of the retainer, obtain more information until you are satisfied that you can accept money in trust and that you can act in the circumstances. Make reasonable inquiries and record the results in the face of unusual or suspicious circumstances (*BC Code* rule 3.2-7 and commentary). If you are not satisfied with the results, withdraw (Rule 3-109).
- Establish firm-wide protocols for transferring money out of your accounts and adhere to them. Empower lawyers and staff to resist a request to bypass the protocols on the basis of urgent circumstances (urgency can be a red flag).
- Implement a policy of refusing to accept payment instructions by email. Require instructions and changes to be given in person or, at a minimum, telephone the sender of the email to verify the instructions or any changes, and be sure to use a telephone number that's been previously provided and independently verified (not the telephone number in the email that may be from a scammer).
- Protect the records relating to your practice and the information contained in them by making reasonable security arrangements against all risks of loss, destruction and unauthorized access, use or disclosure (Rule 10-4(1)). Train your staff not to open suspicious emails and attachments. Obtain professional technical expertise to help you protect confidential information through security measures, including antivirus software and strong passwords, and to detect potential security breaches.
- Review Law Society publications and the Lawyers Indemnity Fund's (LIF) fraud prevention information and videos.
- Report actual or possible trust fund shortages. See Law Society Rule 3-74.
- Trust shortage liability may be covered for up to $500,000 under LIF's cyber insurance program underwritten by Coalition, Inc. or Part C of the BC Lawyers Professional Liability Indemnification Policy. A claim may be excluded if a lawyer fails to comply with Law Society Rule 3-74(1) (trust shortage reporting), or to confirm new or changed fund transfer instructions directly from the lawyer's client by telephone or in person.
- Review your insurance and indemnity coverage with your broker and determine whether you should purchase excess insurance coverage.

RANSOMWARE ATTACKS AND DATA BREACHES

Ransomware attacks — perhaps the most common cyber crime — occur when a fraudster takes an organization hostage by encrypting and disabling access to business-critical systems and data and threatening to publish confidential information until a ransom payment is made, often in Bitcoin.

Data breaches occur when sensitive information from a law firm is provided unwittingly to a third party (e.g., through cyber crime, car and office break-ins, or by simply emailing client information to an unintended recipient).

A breach can be particularly costly and operationally devastating for lawyers who are responsible for maintaining privilege over client information. Firms can also be subject to regulatory fines and reputational damage on top of other claim costs.

How recently have you conducted a security assessment? Do your policies and procedures need updating? See the Office of the Information & Privacy Commissioner's publication, Securing personal information: A self-assessment for public

bodies and organizations (October 2020). It provides helpful guidance and checklists to assess security (e.g., including physical security, human resource security, systems security, mobile and portable devices, network security, transmission security, access controls) as well as assessing wireless network technology, audit process design, incident management and business continuity planning.

Any business that stores data on a network is at risk for a cyber attack.

With many lawyers now working remotely, the increase in virtual access to work servers requires extra vigilance. Be alert and take the following precautions:

- Always think before you click.
- Never open a link or attachment in an email or text message from someone you do not know.
- If you receive a link or attachment that you are not expecting — even if it is from someone you know — call the sender using the telephone number you have on file (not the number listed in the message) to confirm that the message is legitimate.
- If you open a link or attachment that you should have avoided, and a box opens that asks for your password or other information — *Stop*. Close out. Immediately call your IT department to run a scan on your device(s).
- Train your staff on the above, and talk to your IT professional about the simple steps you can take to protect your system found here.
- Note your reporting obligations to the Law Society, LIF and Coalition, Inc. (see sidebar on page 14).

LAW FIRM EMPLOYEE THEFT

When you hire new lawyers and support staff, are you thoroughly checking their references? Are their references real? Do you perform a criminal records check? You may do all of these things with new employees; however, in a number of cases, it is a long-term faithful employee, one who is familiar with your accounts, systems, passwords and signature, who ends up stealing. Employee theft may include stealing cash, issuing phony invoices, forging cheques, helping themselves to business equipment and data theft (e.g., theft of credit card information, client contact and identity information, social insurance numbers). The following tips can help protect you and your firm from inside threats:

- Establish a policy that blank trust cheques must not be signed and store trust cheques securely. See discipline decision 2020 LSBC 52 regarding a lawyer who left a series of signed blank cheques with her bookkeeper. The hearing panel found, among other things, that she failed to properly supervise her bookkeeper and improperly delegated her trust accounting responsibilities. A massive theft occurred.
- Separate office functions so that the same employee is not responsible for opening the mail as well as for all accounting, bookkeeping and banking functions. See the Law Society's Sample Checklist of Internal Controls with respect to the segregation of staff duties, staffing policies and procedures and other measures to help safeguard your practice.
- With existing lawyers and staff, be alert to changes in lifestyle or behaviour (e.g., if an employee seems to be living beyond their means).
- Maintain direct supervision of your non-lawyer staff and proper delegation. Train your staff to recognize issues and bring them to your attention in a timely manner. You remain responsible to exercise your professional judgment. See *BC Code* section 6.1 with respect to work that must not be delegated.
- Do not disclose your Juricert password to anyone, including an employee at your firm, and do not permit anyone else to affix your digital signature (Rule 3-96.1 and *BC Code* rule 6.1-5). A Law Society hearing panel found that, by disclosing his password to his staff and permitting them to affix his electronic signature to documents filed with the Land Title Office for over three years, a lawyer had committed professional misconduct. The lawyer was suspended for four months and was ordered to pay costs (2020 LSBC 13).
- The LIF policy does not cover theft by non-lawyer staff. As the partners and

Services for lawyers

Law Society Practice Advisors

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

Practice advisors assist BC lawyers seeking help with:

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

Tel: 604.669.2533 or 1.800.903.5300

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

◆

LifeWorks – Confidential counselling and referral services by professional counsellors on a wide range of personal, family and work-related concerns. Services are funded by, but completely independent of, the Law Society and provided at no cost to individual BC lawyers and articled students and their immediate families.
Tel: 1.888.307.0590

◆

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

◆

Equity Ombudsperson – Confidential assistance with the resolution of harassment and discrimination concerns of lawyers, articled students, law students and support staff of legal employers.
Contact Equity Ombudsperson **Claire Marchant** at 604.605.5303 or equity@lsbc.org.

firm are liable for losses, consider purchasing commercial insurance to protect yourself from employee theft or other wrongful or unlawful conduct of an employee.

INVESTMENT AND BANKING SCAMS

There are many variations of investment and banking scams that crooks may concoct to trick naive investors and lawyers. One example is the so-called "prime bank scheme." Characteristically, the scammer tells a potential investor that they are being invited into the world of "big money" through a tremendous investment opportunity that will generate incredible returns. The opportunity often involves the financing of large, sometimes foreign and usually credible "prime" financial institutions such as the national banks, the World Bank, the International Monetary Fund (IMF) or the International Chamber of Commerce (ICC). The institutions may be prime, but the promoters are not.

Another example of an investment scam is the Ponzi or pyramid scheme. Investors are convinced to put their money into a project that sounds good but is not specific. Scammers use terms such as "global currency arbitrage," "hedge futures trading," "high yield investment properties" and "exceptional mortgage opportunities." For a time, some investors do receive returns, but not because the scheme has access to any exceptional investments. Rather, it is because the first wave of investors is paid using money from the second wave, and so on. Eventually the scheme gets top-heavy and collapses. The scammers disappear, and the lawyers and investors are left to cope on their own.

Scammers want to use lawyers to add legitimacy to these types of schemes. The mere presence of a lawyer in the scheme can make naive investors believe the scheme is legitimate and their money protected, especially if it is in a lawyer's trust account. Scammers may try to convince lawyers to give so-called independent legal advice or signing officer certifications pursuant to Part 5 of the *Land Title Act*.

Also, having the funds in a lawyer's trust account may provide another benefit to the scammer: confidentiality. Once the funds are gathered, the scammer's next step may be to instruct the lawyer to wire it into an account that is difficult to trace and the money is never seen again.

Common characteristics of investment scams

Here are some common characteristics of investment scams:

- The scammer is not registered to trade securities or other investment products.
- The scammer claims that their business includes negotiating loans, letters of credit or promissory notes with a foreign financial institution or a "prime" bank that is supposedly affiliated with a reputable international organization (e.g., the World Bank, IMF, ICC).
- The scheme is cloaked in confidentiality. Paradoxically the exception to the

Reporting obligations

To the Law Society

Note the reporting obligations in Law Society Rules 3-74 (Trust shortage), 3-96 (Report of failure to cancel mortgage), 3-97 (Reporting criminal charges) and 10-4 (Security of records). Also see *BC Code* rules 7.1-3 (Duty to report) and 7.8-2 (Notice of claim).

A lawyer who discovers a trust shortage must immediately pay enough funds into the account to eliminate the shortage and, with some limited exceptions, make a written report to the executive director, including all relevant facts and circumstances (Rule 3-74). If there has been a security breach, you will want to ensure that it is safe to use your email, computer system or fax machine. Your report may be sent by email to the Trust Assurance department at trustaccounting@lsbc.org. You can also report by fax (604.646.5917) or by mail to the Law Society of BC, Attention: Trust Accounting.

Lawyers are required to take reasonable security measures to protect their records against the risk of loss, destruction and unauthorized access. If you have lost custody or control of your records for any reason, you have an obligation to immediately report to the executive director. This includes if you have been a victim of ransomware or a data or privacy breach. See the Discipline Advisory, Rule 10-4 Reports. If it is safe to use your email, you may sent your report to Professional Conduct at professionalconduct@lsbc.org. You also have the option to send it by fax (604.605.5399) or report by mail to the Law Society of BC, Attention: Intake Officer, Professional Conduct.

To the Lawyers Indemnity Fund

The BC Lawyers Professional Liability Indemnification Policy requires you to report to the Lawyers Indemnity Fund (LIF) in writing immediately if you become aware of an error or any circumstances that could reasonably be expected to be the basis of a claim, however unmeritorious (Condition 4.1 of the policy). LIF's website includes detailed reporting guidelines.

If you suspect that you have been involved or may be involved in a cyber claim, immediately report the matter following the detailed reporting requirements set out here. LIF's indemnification program includes cyber coverage for qualifying law firms operating in BC through underwriter Coalition, Inc. Coverage is claims-made and applies to third-party liability claims, first-party losses and cyber crime claims, and the most common cyber risks — social engineering fraud (including the bad certified cheque scam), ransomware and data or privacy breaches. If you do not do your due diligence to properly authenticate payment instructions received electronically, you may not have coverage if there is a theft of client funds.

If you have insurance in the private market that might respond to your claim, you will want to notify that insurer separately. Contact your insurance broker to make that report.

"little in writing" rule is that there is often a confidentiality agreement that the investors, and sometimes lawyers, are asked to sign.

- The scammer may say that the investment is only offered to a select few.
- The investment is baffling, may be complex and includes investment terms and concepts that people, including lawyers, think they should understand.
- Very little concrete detail is provided.
- Most of the income seems to be generated from the number of people recruited into the scheme and not from the product or investment opportunity itself.
- The profits offered are high and seem too good to be true.
- The typical investor is unsophisticated.

Here are some common features of the scammer's relationship with their lawyer. Not all of these features may be present at the same time.

- You are promised big money, a retainer and fees that are not in keeping with the legal services to be provided.
- Any money that the scammer pays you is for a retainer (which may be significant) and perhaps for some small legal service, such as incorporating a company, that may be unconnected to the investment.
- Very little of what the scammer asks you to do amounts to the practice of law. Often the only real service the client requests is access to your trust account (i.e., to receive funds from investors).
- You may be offered a percentage of every dollar that passes through your trust account or a finder's fee for each new investor that you bring through the door or that you sign up by giving independent legal advice or certifying for *Land Title Act* purposes.
- You may be pressured to release money, often in breach of trust conditions that investors have placed on it, with assurances that the investment is about to pay off and you are the only one holding things up.
- You have difficulty obtaining reliable information about the client's source of money for the project.
- No financial institution that you have heard of is involved with the project or, if you have heard of the institution, you are not given information on how to contact anyone in a position of authority, and the scammer controls all contacts.
- You don't really understand how the investment works.
- The client may ask you about your lawyer's indemnity coverage under the compulsory policy.

What to do if you suspect an investment scam

If you suspect a scam, take the following important steps before accepting any money in trust, especially money from third-party investors. Receiving money in trust from investors can be a critical turning point after which withdrawing your services becomes more complicated.

Ask yourself these questions:

- If this is such a powerful and unique opportunity, why was I picked as the lawyer for the project?
- Is this work outside of my practice area?
- What real legal services am I being asked to perform, and how do they relate to the project?
- If I am asked to receive funds in trust, would I be in compliance with Rule 3-58.1? Would I be providing legal services *directly* related to those particular funds?
- Have I made reasonable inquiries about the client, the subject matter and objectives of the retainer, and the client's source of money for the project? Have I made a record of the results of my inquiries? See the source of money FAQs on the Law Society website and *BC Code* rule 3.2-7 and commentary.
- Do I understand the deal? Does it make sense? Do I need more information, including more supporting documents? Have I made a record of my inquiries?
- How is this investment meant to generate a profit beyond simply generating further investment money?
- Why can't I communicate with the individual from the financial institution or why does my client control all my communications with them?
- Who are some other lawyers who represented this client in the past, and may I contact them? If not, why not?
- Am I in a position to provide assurances of the nature that I am being asked to give?
- Is this individual on the BC Securities Commission's Disciplined List or the subject of a Notice of Hearing or Temporary Order?

For more information on investment scams, see Discipline Advisory Micro-cap stocks (June 1, 2020), Fraudulent Investment Schemes and the BC Security Commission's investment fraud warning signs and other resources, including Investor Alerts.

Consider whether you need to seek your own counsel before acting or taking further steps. Run the scenario by a trusted lawyer or a Law Society practice advisor.

If you suspect a scam, withdraw from acting for the client (Law Society Rule 3-109 and *BC Code* rules 3.2-7 to 3.2-8 and section 3.7). Again, seek assistance from counsel if necessary, or a Law Society practice advisor if you have issues with withdrawal and especially if you have received money from third parties.

Consider whether you need to make a report to LIF or your commercial insurer or both. Note that the mandatory policy does not respond to situations where you have merely acted as a conduit for funds without providing professional services (i.e., performing an activity that is the "practice of law").

REAL ESTATE FRAUDS

Although new fraud schemes can appear at any time, the preponderance of real estate frauds involving lawyers generally fall into two main categories: value fraud and identity fraud. In addition, criminals who have already committed a crime (e.g., drug trafficking, human trafficking, fraudulent transactions) may try to launder their ill-gotten gains in real estate.

Indicators of fraud and indicators of money laundering in real estate frequently overlap. You may see some of these examples in connection with both fraud and

money laundering:

- You have difficulty obtaining information to identify and verify the client's identity.
- The client refuses to provide their own name on documents or uses different names on offers to purchase, closing documents or deposit receipts.
- The client does not care about the property, price, mortgage interest rate, legal fees or brokerage fees.
- The client offers to pay higher than usual fees for the legal services.
- The client is out of sync with the property (occupation, personal wealth, level of sophistication).
- A stranger who appears to control the client attends to sign documents.
- Your contact with the client is only or primarily by email.
- The head office of a corporate client has recently been changed to an address that does not make sense.
- The client who is purchasing property has been named in the media as being involved in a criminal organization.
- The purchase and sale is presented as a private agreement — no realtor is involved or the named realtor has no knowledge of the transaction.
- The transaction involves a power of attorney.
- The transaction includes a large vendor take-back mortgage.

Value fraud – inflating the property's price to obtain a large loan

Watch out for fraud attempts on lenders. Although variations exist, one typical value fraud scenario involves a flip to an accomplice at an inflated price. The arrangement initially involves a sale (possibly from a legitimate seller), with a subsequent fraudulent flip for a higher amount to establish a falsely high property value. That higher value is then used as the basis for obtaining an inflated loan. For example, the dishonest buyer negotiates a property purchase from a legitimate seller for a market value of $500,000. The dishonest buyer then flips the property to an accomplice, or in some cases a dupe, for $650,000. The purchase and sale agreement is used to obtain a high ratio loan for $585,000, $85,000 above market value. The scammers then disappear with the excess value, leaving the bank holding a property worth less than the mortgage.

The scammers take their chances that the lender will not do a proper appraisal. Although lenders are responsible for their own decisions on whether to loan money and how much, you can assist in fighting fraud if you think a value fraud is being perpetrated.

Common characteristics of value fraud

Here are some common characteristics of value fraud. You may not see all of these features in a particular file.

- The original contract allows for a nominee or an assignment, and a flip occurs, often with both deals closing on the same day.
- The lender only knows about the second contract with the higher value.
- No realtor is involved, especially in the flip, or if there is a purported realtor, real estate commissions are rebated to one of the parties.
- The lender has not done an appraisal or independent valuation.
- You are asked to act for the lender, the nominee buyer (a fraudster or dupe) and the original fraudster buyer, but the lender does not know you are acting for the original fraudster buyer, as the lender does not even know about the original contract.
- You are asked to complete the transaction by preparing documents so that the property transfers from an innocent seller to the nominee buyer at the lower price set out in the original contract.
- The high ratio mortgage amount above the original contract price is paid into your trust account, and you are asked to pay out the excess funds to the original fraudster buyer, the nominee buyer or some other seemingly unconnected person.
- The nominee buyer may sign a power of attorney in favour of the original fraudster buyer (attempting to avoid attending your office).
- You may be offered higher than usual fees.

Tips for guarding against value fraud

In addition to recognizing some of the common characteristics of value fraud, below are some general tips for guarding against these schemes:

- Be cautious about flips. Many are legitimate, but in any situation where the seller on the contract is not the same as the registered owner, ask questions to find out the background to the transaction and assess its legitimacy. Make a record of your inquiries and the results.
- Insist on the documentation and evidence you need to be satisfied about the legitimacy of the transaction and the parties. Such evidence may include obtaining cancelled charges from the Land Title Office if you suspect a large number of background transactions have occurred, such as a rapid turnover of mortgage financings with the amounts rising in each case. If you suspect that the flips have been happening on separate occasions using different lawyers each time, consider doing historical searches to see if there have been repeated sales at progressively higher prices over a short period of time.
- Verify your clients' identities in accordance with the Law Society Rules, Part 3, Division 11 – Client Identification and Verification. Note the wide definition of "client" in Rule 3-98. If you are acting for an attorney appointed under a power of attorney, verify the identity of both the donor and the donee.
- Follow the *BC Code* rules respecting joint retainers.

When acting under a joint retainer, the *BC Code* requires that you reasonably believe that you are able to represent each client without having a material adverse effect on the representation of, or loyalty to, the other client. This precludes you from acting for parties to a transaction who have different interests, except where joint representation is permitted by the *BC Code* (rules 3.4-5 to 3.4-7 and Appendix C). In situations permitted by the *BC Code* where you are being asked to represent more than one party (e.g., a buyer and an institutional lender), you should review the joint

retainer rules with the clients and follow Appendix C so the parties are aware that nothing can be kept in confidence between them. You will have advised the clients as provided under rules 3.4-5 and 3.4-6 and have confirmation in writing that the parties are content that you act. *BC Code* rule 3.4-7 provides:

> 3.4-7 When a lawyer has advised the clients as provided under rules 3.4-5 and 3.4-6 and the parties are content that the lawyer act, the lawyer must obtain their consent.
>
> Commentary
>
> [1] Consent in writing, or a record of the consent in a separate letter to each client is required. Even if all the parties concerned consent, a lawyer should avoid acting for more than one client when it is likely that an issue contentious between them will arise or their interests, rights or obligations will diverge as the matter progresses.

Note that you should have either the clients' consent in writing or a record of the consent in a separate letter to each client. Documenting your advice respecting rules 3.4-5 and 3.4-6 will allow you to tell both clients all salient information. You can then advise the lender of the unusual features of the transaction without fear of breaching client confidentiality, such as telling the lender that the transaction involves a flip, that there are two contracts and one has a much lower price, that there have been a number of rapid turnovers of ownership with prices rising in each case, that a power of attorney is being used to execute the mortgage, and so on. After advising the lender, obtain and confirm further instructions in writing before proceeding with an advance under the mortgage. If you feel that you may be compromised in your ability to be forthright with the lender, contact a Law Society practice advisor or senior real estate practitioner to discuss how to proceed.

Identity fraud – impersonating an owner

In an identity fraud, a scammer poses as a property's owner or as an attorney acting under a power of attorney. Also, two scammers working together may impersonate both individuals. Generally, a scammer, posing as an owner, either secures mortgage financing or sells the property and pockets the proceeds. In either case, the scammer usually asks you to wire the funds. Once the scammer receives the mortgage funds or proceeds of sale, they disappear.

There are also reports of MLS-listed properties where a scammer, posing as an owner, creates a separate, fraudulent advertisement to sell the same property and be paid with virtual currency such as Bitcoin. Unwary potential buyers may see the MLS listing and think that the fraudulent listing is just another way of marketing the property. Be cautious of transactions in which a purported owner will accept virtual currency for the purchase price. In addition to ensuring that the seller is the actual owner, such a transaction will have unique legal issues that are not dealt with in common standard contract of purchase and sale agreements.

FRAUD VERSUS MONEY LAUNDERING

Fraud and money laundering are different; however, the indicators of fraud and the indicators of money laundering and the associated professional obligations often overlap. Money laundering is the process that criminals use to disguise the source of money or assets that they derived from criminal activity. Money laundering can occur without cash being involved; however, it has often been associated with cash (hence the strict provisions regarding cash in Law Society Rules 3-59 and 3-70). For example, a criminal may make money from selling illegal drugs for cash. They purchase a luxury car with the dirty money. Then they sell the car to obtain money for a deposit on a condo. The purchaser wires the money for the car to the criminal. The criminal then purchases a condo. The new condo is purchased, indirectly, by the commission of an offence.

Laundering the proceeds of crime is a criminal offence (*Criminal Code* section 462.31). In order for money laundering to occur, there must first be a designated offence (e.g., fraud, extortion, human trafficking, robbery, illegal drug trafficking, being an accessory after the fact). Criminals then attempt to cover up the source of their ill-gotten gains by placing the funds into the financial system, moving the funds around to make it difficult to trace by investigators and auditors, and ultimately integrating the funds into the legitimate economy (e.g., by purchasing real estate, luxury vehicles, vessels, art, or jewellery). Criminals try to retain lawyers to provide traditional legal services in which lawyers may accept money into trust and unknowingly assist in laundering the proceeds of crime. Examples of such legal services might include the creation of legal structures (companies, trusts) and real estate transactions.

Using a lawyer can lend legitimacy to a criminal's transaction and provide confidentiality and the opportunity to deposit their money in a lawyer's trust account. Lawyers, as gatekeepers to their trust accounts, should ensure that they do not recklessly accept dirty money into their trust accounts. Recklessness was added as a form of mens rea to section 462.31 of the *Criminal Code* in 2019. Lawyers should make inquiries about the client's source of money for the matter for which they have been retained.

KNOW WHERE TO GET HELP

If you experience a potential fraud, help is available. Contact a senior lawyer that you trust, a Law Society practice advisor or a Lawyers Indemnity Fund claims counsel.

In the extreme, if a matter has gone too far before you realize that you have been duped, contact your insurer immediately. To continue to deal with a fraudster on your own out of fear of exposure or reprisal is unlikely to come to a good end. A fraud left unchecked may lead to discipline by the Law Society, denial of insurance, personal financial loss and, in some situations, criminal law sanctions. If you find you do not have coverage for the matter, consider retaining counsel to advise you.

For questions regarding the Law Society Rules in Part 3, Division 11 – Client Identification and Verification, or ethical questions, contact a Law Society practice advisor (practiceadvice@lsbc.org or 604.443.5797). If you have any questions about cash or trust reporting, contact a Law Society trust auditor (trustaccounting@lsbc.org or 604.697.5810). To report a potential claim or speak with a claims counsel, contact the Lawyers Indemnity Fund. If you have additional insurance through the commercial market, you may need to contact that insurer too.❖

Conduct reviews

PUBLICATION OF CONDUCT review summaries is intended to assist lawyers by providing information about ethical and conduct issues that may result in complaints and discipline.

A conduct review is a confidential meeting between a lawyer against whom a complaint has been made and a conduct review subcommittee composed of at least one Bencher and one other senior lawyer. They are ordered by the Discipline Committee to address conduct that led to the complaint with a focus on professional education and competence. After the conduct review, the subcommittee provides a written report to the Discipline Committee in which they may direct that no further action be taken, that a citation be issued, that the conduct review be rescinded in favour of a different alternative disciplinary outcome or that the lawyer be referred to the Practice Standards Committee.

CLIENT ID AND VERIFICATION

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

A lawyer failed to verify the identity of an instructing individual of a corporate client in a financial transaction, contrary to Law Society Rules 3-102 and 3-104. The lawyer was retained by the general manager of a corporate client in connection with a commercial conveyance, but he did not meet face-to-face with the instructing individual during the transaction. The company wired the purchase proceeds into the lawyer's trust account. The lawyer later issued a trust cheque payable to the vendor without having verified the instructing individual's identification. He also did not verify the individual's identity during previous dealings. To prevent a reoccurrence, the lawyer has created an agency agreement and a client identification checklist. CR 2021-35

A compliance audit revealed that a lawyer did not comply with the client identification and verification rules in three client matters. The lawyer admitted that he did not understand the client identification and verification rules before the compliance audit. He has since reviewed the CIV rules, taken a Law Society course about them, revised his client intake process and implemented a client verification checklist. CR 2021-36

Another lawyer did not properly verify the identity of the instructing individuals for three corporate clients in accordance with the requirements of Law Society Rule 3-102. The lawyer mistakenly thought that it was not necessary to obtain picture identification in circumstances where the lawyer's office had been the registered and records office for the corporate clients and where he knew the instructing individuals personally. The lawyer has taken steps to prevent this error from occurring again. CR 2021-37

Another lawyer failed to comply with the client identification and verification rules in three client matters, including one transaction for a corporate client she did not meet in person, contrary to Law Society Rules 3-102 and 3-104. The lawyer has established a mandatory protocol for client identification and verification to ensure that all lawyers and staff at her firm understand and comply with the CIV rules. CR 2021-38

CASH RULES

A lawyer accepted an aggregate total of $8,224.30 in cash from his client as a retainer for a permanent resident application. At the conclusion of the retainer, the lawyer refunded $1,238.25 to the client by way of trust cheque instead of cash, contrary to Law Society Rule 3-59(5). The lawyer also failed to maintain cash receipts with all the required information, contrary to Law Society Rule 3-70. The lawyer acknowledged the errors and has made several changes and updates to her office procedures. CR 2021-39

In another matter involving infraction of the same rules, a lawyer refunded money to two clients by way of trust cheque when the refunds should have been made in cash and failed to prepare a cash receipt for one cash deposit. The lawyer acknowledged the misconduct. The firm has updated its practices and policies and no longer accepts cash in the office. CR 2021-40

While acting in an estate matter, a different lawyer accepted $11,663.45 in cash ($7,500 of which was a cash retainer and the remaining funds were cash estate monies). The lawyer later refunded $8,568.61 to the client by way of trust cheque instead of cash, contrary to Law Society Rule 3-59. The lawyer stated, "No one caught it at the time that a significant portion of the monies received had been paid in cash." His normal practice was to check for cash deposits before issuing refunds but the client, who had primarily paid by cheque in the past, had paid in cash on this file. The lawyer also violated Law Society Rule 3-59 by providing incorrect answers to two questions on his annual trust report. As well, his explanation to the conduct review subcommittee differed from that provided in correspondence to the Law Society. The lawyer has taken four Law Society courses pertaining to money laundering issues and no longer accepts cash from clients. CR 2021-41

CASH TRANSACTION / WITHDRAWAL FROM TRUST

A compliance audit revealed that a lawyer accepted an aggregate amount of $9,000 in cash from a debtor in a creditor's remedies matter without providing a written report to the executive director or returning the cash, contrary to Law Society Rule 3-59(3) and (6). As well, 540 trust cheques were issued without the signature of a practising lawyer, contrary to Rule 3-64. The lawyer had given his trust account details to the debtor to facilitate payments in favour of his client. The lawyer had failed to consider the possibility that the debtor would deposit cash into his trust account and also failed to track the amount of cash received. The lawyer has implemented changes to his practice to ensure that

cash receipts are properly tracked, individuals cannot make direct deposits to his trust account and every trust cheque is signed by a lawyer. CR 2021-42

JURICERT

A lawyer disclosed his Juricert password to his assistant and conveyancer, and he allowed them to use his digital signature on documents filed electronically with the Land Title Office, contrary to his Juricert Agreement, Part 10.1 of the *Land Title Act*, Law Society Rule 3-96.1 and rule 6.1-5 of the *Code of Professional Conduct for British Columbia*. The lawyer explained that he reviewed documents and filings prepared by the staff, but that he was not aware it was inappropriate to permit an employee who was not a lawyer to use his digital signature. The lawyer has since changed his password and personally affixes his digital signature on all documents registered with the Land Title Office. CR 021-43

UNSATISFIED MONETARY JUDGMENTS

A compliance audit revealed that a lawyer failed to pay several monetary judgments against him within seven days or to report the unsatisfied judgments to the executive director, contrary to Law Society Rules 3-49 and 3-50. The lawyer believed that his obligation to report only concerned judgments in the course of his legal practice. He advised that all judgments against him have been paid in full, with interests and costs where applicable. The lawyer resolved in future to promptly pay all bills that he does not object to in full, whether or not they relate to his practice or to a personal matter. If he objects to the bill, he will make full and prompt payment and then commence legal proceedings for recovery, or he will commence legal proceedings and pay any amounts found to be owed. CR 2021-44

DUTY OF LOYALTY

A lawyer wrote an article containing comments related to her former client, contrary to her duty of loyalty to her former client and her obligations regarding public statements in rules 3.3-1, 3.3-2 and 7.5-1 of the *Code of Professional Conduct for British Columbia* and its commentary. Rule 3.3-1 requires lawyers to maintain their clients' confidences unless authorized by the client to disclose them or required by law to do so. While the rule may not apply to facts that are public knowledge, the lawyer's article explicitly suggested that the lawyer had gleaned the information in it from her relationship with the former client. The lawyer agreed that she should not have written the article. CR 2021-45

BREACHES OF UNDERTAKING

A lawyer breached an undertaking to opposing counsel to hold the sale proceeds of her client's property in trust, contrary to rules 2.1-4(b), 5.1-6 and 7.2-11 of the *Code of Professional Conduct for British Columbia*. The sale was completed by a conveyancing lawyer who was not made aware of the lawyer's undertaking, and the sale proceeds were paid directly to the client. When counsel for the client's former spouse sought to confirm that the proceeds of sale had been deposited into trust, the lawyer responded that they were not in her trust account. She contacted the Law Society regarding her breach of undertaking and was advised to self-report, but she failed to do so for several months. Opposing counsel sent several emails requesting information about the conveyance and sale proceeds. The former spouse complained to the Law Society that the lawyer was not responding to her counsel. After learning about the complaint, the lawyer again advised the Law Society of her breach of undertaking and withdrew from representing her client. She advised the opposing counsel that she no longer represented her client and that she did not have the sale proceeds in her trust account.

The lawyer admitted that she had breached her undertaking, failed to promptly self-report the breach and failed to respond promptly to communications from another lawyer. She is addressing her conduct by taking continuing education, improving her office procedures and addressing her mental and physical health. CR 2021-46

In another matter, a lawyer breached an undertaking when he paid out proceeds of sale to his client instead of to counsel to satisfy a consent order, contrary to rules 2.1-4(b), 5.1-6 and 7.2-11 of the *Code of Professional Conduct for British Columbia*. The lawyer attributed the breach to his failure to follow established office protocols, his failure to adequately review the file in his haste to satisfy the client's request during the busy holiday season and staff changes. The lawyer is taking proactive steps to improve his work-life balance, to manage his caseload, to educate staff on office procedures, to receive peer support and to be selective when assuming conduct of new matters. CR 2021-47

A lawyer allowed sale proceeds to be paid out to her clients in breach of a signed acknowledgment that required her to pay the funds to a financial institution, contrary to rules 3.2-1 and 7.2-11 of the *Code of Professional Conduct for British Columbia* and its commentary. The lawyer self-reported to the Law Society that she had paid out $75,000 of sale proceeds to her client instead of the financial institution entitled to the proceeds. She acknowledged that she failed to clearly record the trust condition she had accepted when signing the documents, failed to take and retain a copy of the document describing her obligation and failed to open a file to track the trust conditions. The lawyer has met with her staff to review her office systems and will follow appropriate protocols and procedures in all conveyancing matters or matters where undertakings or trust conditions are granted. CR 2021-48

CONFLICT OF INTEREST

A lawyer acted in a conflict of interest by commencing litigation against a former client of his firm, contrary to rule 3.4-10 of the *Code of Professional Conduct for British Columbia*. The lawyer's partner had referred the file to him. Based on his partner's representations and his own search, the lawyer believed that the law firm had simply been the registered and records office for the company of which the former client had an interest, and that the firm had no confidential information that would impede his ability to act against the former client. The lawyer operated on the understanding that the former client's name arose only in what he saw as a partnership dispute between the shareholder and the firm's client and he relied on the billing and conflicts check conducted by his

continued on page 27

Discipline digest

BELOW ARE SUMMARIES with respect to:

- Valorie F. Hemminger Long
- Larry D. Routtenberg
- Peter Darren Steven Hart
- Florence Esther Louie Yen
- Amarjit Singh Dhindsa
- Jeremy Daniel Knight
- George Roland Holland
- Amanda Jane Rose
- Zao (Aidan) Huang

For the full text of discipline decisions, visit Hearing Schedules and Decisions on the Law Society website.

VALORIE F. HEMMINGER LONG

Victoria, BC
Called to the bar: May 17, 1996
Consent agreement accepted: June 1, 2021

FACTS

Valorie F. Hemminger Long attended a party and had fewer than 10 tablets of MDMA (methylenedioxymethamphetamine) with her at the party. While there, she took half a tablet of MDMA. She was asked for MDMA and she gave it to two people.

Between 2010 and 2019, her lifestyle involved the use of non-prescription drugs. In late 2020, she was diagnosed with mental illness and is receiving treatment. Since her diagnosis, she has not consumed MDMA.

CONSENT AGREEMENT

Hemminger admitted she provided a controlled substance to two members of the public and that this conduct constituted conduct unbecoming the profession. She agreed to be suspended for two weeks.

The Discipline Committee chair considered the agreed statement of facts and her prior professional conduct record, which included three sets of recommendations on practice management made by the Practice Standards Committee. The chair accepted the agreement that Hemminger be suspended from the practice of law for two weeks.

LARRY D. ROUTTENBERG

Penticton, BC
Called to the bar: July 12, 1983
Consent agreement accepted: July 14, 2021

FACTS

Larry D. Routtenberg misappropriated or improperly withdrew client trust funds when he authorized the withdrawal of residual trust balances on 19 instances totalling $1,055.12, to clear out aged trust balances prior to a compliance audit. He did so by billing clients for disbursements he thought had likely been incurred. He did not check the file materials to confirm that the withdrawals from trust were justified, acted in haste and did not have a proper understanding of the trust accounting rules. He failed to ensure bills were first sent to clients before withdrawing the funds from trust.

Routtenberg was alerted to the impropriety of his actions during the compliance audit and immediately returned the funds to trust. He later paid the funds to the clients or applied to remit them to the Law Society. At the time, Routtenberg was suffering from a medical condition.

CONSENT AGREEMENT

Routtenberg admitted he committed professional misconduct by misappropriating or improperly withdrawing client trust funds when he was not entitled to the funds and without first preparing and immediately delivering a bill to the client, and by failing to ensure that bills were sent to clients prior to withdrawing funds from trust.

Routtenberg agreed to be suspended from the practice of law for 10 weeks and provided an undertaking that he will not handle any trust transactions for two years. In accepting the consent agreement, the chair of the Discipline Committee considered the facts and Routtenberg's professional conduct record, which consisted of one conduct review for failing to properly dispose of confidential files.

PETER DARREN STEVEN HART

Vancouver, BC
Called to the bar: May 20, 1994
Disbarred: July 20, 2021
Custodian appointed: July 27, 2021
Hearing dates: July 29-30, 2020 and February 3, 2021
Panel: Lindsay R. LeBlanc (chair), Thelma Siglos and Thomas L. Spraggs
Decisions issued: October 28, 2020 (2020 LSBC 51) and July 20, 2021 (2021 LSBC 29)
Counsel: Alison Kirby for the Law Society; Peter Firestone for Peter Darren Steven Hart

PRELIMINARY APPLICATIONS

Peter Darren Steven Hart applied for adjournment of a hearing that had been scheduled for November 18-22, 2019 regarding a citation issued September 26, 2018. The Law Society opposed the application.

Hart had admitted most of the facts underlying the citation in response to a notice to admit. He retained legal counsel only on October 25, 2019, although there was a submission that he had sought counsel earlier but that intention was frustrated by the unexpected illness of the other counsel.

Hart had previously indicated that he intended to consent to a without-prejudice resolution that would resolve the citation. However, new counsel advised him to reject the resolution proposal and proceed with a hearing. Hart's counsel indicated that he may apply to withdraw the admissions made by Hart. If the adjournment was not granted, counsel would not be able to act for Hart as there was not time to review the disclosure and adequately prepare for a hearing.

The primary factor weighing against adjournment was the almost 14 months that had passed since the citation was issued. Further delay runs contrary to the protection of the public, which requires that administration of justice move forward in a timely and expeditious matter.

However, if the adjournment were not granted, Hart would face, without counsel, a multi-day hearing that could result in disbarment or suspension.

The adjournment was granted, with the following conditions:

1. the new hearing date for the citation would be peremptory on the respondent; and
2. a prehearing conference must be scheduled before December 20, 2019, at which time the parties would:
    - set any further prehearing applications and confirm dates for the exchange of related materials;
    - confirm time estimates and set hearing dates for the citation;
    - set such further prehearing conferences as may be required or of assistance in moving this matter forward; and
    - address such other matters as the parties and the Chambers Bencher deem advisable or necessary. (2019 LSBC 39)

At the time of Hart's second application, disciplinary hearings were generally held by Zoom video-conferencing due to health concerns arising from the COVID-19 pandemic and the provincial requirements for physical distancing. A practice direction was issued on April 27, 2020 to provide alternative options to in-person hearings and to ensure the tribunal's work continued in the public interest and with fairness to the parties.

Hart applied to hold an in-person disciplinary hearing in place of a hearing by video-conferencing and, in the alternative, to adjourn the hearing dates to a time when the hearing could proceed in person. The Law Society consented to an in-person disciplinary hearing but opposed any adjournment.

The president's designate ordered the hearing be held in person, subject to practice and procedure direction by the hearing panel. However, she noted that she would have dismissed the application had the Law Society not consented, as Hart's reasons for not using video-conferencing were not persuasive. The president's designate ordered the hearing to proceed as scheduled. (2020 LSBC 34)

FACTS

In 2013, while acting for clients in an estate planning matter, Peter Darren Steven Hart improperly withdrew $4,000 by way of a trust cheque payable to a lending company owned and controlled by Hart, when neither Hart nor the lending company was entitled to the funds. Hart admitted there was no trust instrument appointing him as trustee; he did not obtain authorization to make investments on behalf of his clients, beyond holding the funds in a separate interest-bearing trust account; he did not inform his clients about the loan to the lending company; he did not inform his clients about his interest in the lending company; and he did not provide his clients with an accounting regarding the funds.

In four other estate matters from 2012 to 2014, Hart caused his lending company to borrow or receive totals of $200,000, $60,000, $265,000 and $6,000 from various clients and then loaned those funds to his law firm. He provided legal services to the clients when he or his firm had a financial interest in the subject matter of the legal services by preparing promissory notes and assignments in favour of the clients, as security for the loans made by the clients to the lending company.

In three of those estate matters, Hart also failed to honour the promissory notes and assignments by failing, upon receipt, to apply the settlement proceeds or monies paid on law firm files to the debt owed to his clients or to assign replacement security.

In all cases, the funds transferred were secured by promissory notes with the security being fees on the contingency files of Hart's law firm. Interest was paid at a rate of 15 per cent with 10 per cent going back to the client files and five per cent going to Hart's company.

This series of transactions spanned a number of years, was complex and required Hart to set up the system to facilitate the transfers. The efforts were deliberate. Hart did not advise his clients or the estate beneficiaries of the loans, nor did he seek independent advice regarding an assessment of the risk of the loans. The loans were done out of complete self-interest.

Further, Hart failed to notify the executive director in writing of the circumstances of two unsatisfied monetary judgments against him and his proposal for satisfying the judgments, contrary to the Law Society Rules.

DETERMINATION

The panel determined that Hart's conduct in improperly withdrawing $4,000 in trust funds amounted to misappropriation. Hart agreed that it was a mistake to withdraw the funds from trust and that he acted in a conflict of interest, but he denied that it was a deliberate act to transfer the funds. However, the panel found that Hart withdrew the trust funds and used them not only to fund his business operations but also to personally profit, without informing the clients or obtaining their consent. At no time did he consider the best interests of his clients, making it a serious misuse of trust funds.

The panel also determined that Hart committed professional misconduct in relation to 10 allegations. Hart admitted that he acted in a conflict of interest in the loan process. The evidence showed that Hart's law firm was borrowing from its clients, and the fact that a lending company was in the middle of the transaction did not make an otherwise impermissible act permissible. Rather, it demonstrated an attempt to evade

the rules and constituted a breach of the fiduciary duty owed to Hart's clients.

The panel further determined that, by failing to report unsatisfied judgments to the executive director, Hart committed a breach of the Law Society Rules.

DISCIPLINARY ACTION

The Law Society submitted that Hart's misconduct was so egregious that an order of disbarment was appropriate. Hart submitted that the facts of this case did not rise to the level where the need to protect the public required disbarment and the appropriate discipline was a suspension of four to five months.

The panel considered the seriousness of misappropriating clients' funds, the intentional and self-serving nature of the conflict of interest and the less serious conduct of breaching the Rules. The panel found that Hart's actions undermined the public's confidence in the legal profession and that the character references submitted in support of Hart could not negate the seriousness of the conduct.

The panel found no exceptional circumstances that would require a departure from the general rule that disbarment follows a finding of misappropriation of trust funds. The panel further found there was no reasonable belief that the funds could be withdrawn and used to fund Hart's legal practice and concluded disbarment was necessary to ensure the public continues to have confidence in the rules regulating the legal profession.

The panel ordered that Hart:

1. be disbarred; and
2. pay costs and disbursements of $17,396.70.

FLORENCE ESTHER LOUIE YEN

Vancouver, BC

Called to the bar: September 1, 1995

Hearing dates: October 29-31, 2019, March 4, 2020 and March 17-18, 2021

Panel: Nancy Merrill, QC (chair), John Lane and Sandra Weafer

Decisions issued: September 18, 2020 (2020 LSBC 45) and July 21, 2021 (2021 LSBC 30)

Counsel: Mandana Namazi for the Law Society; Gerald Cuttler, QC for Florence Esther Louie Yen

FACTS

Florence Esther Louie Yen practised as an employee of a law firm and was a signatory on the firm's trust accounts. She was retained by a client to incorporate a numbered company for the purpose of a restaurant business. Over several years, she provided a variety of legal services to the client and his partner, or their corporate entities.

The client contacted Louie Yen from Hong Kong and advised that his uncle's foundation wanted to invest in Canada and that he was looking at purchasing a property. The client would be receiving funds from his uncle as a gift or a loan. He asked for instructions on how the uncle could wire money into the firm's trust account.

Louie Yen authorized her assistant to provide the client the deposit information for one of the firm's trust accounts and US$500,000 was wired to the trust account. The money was received as C$604,770.16.

The client called Louie Yen and said the offer on the property he was looking at was not accepted. The client said he wanted to access the money that had been forwarded to the trust account.

Louie Yen was unsure if she was able to release the funds, as the funds were forwarded from the uncle for a transaction that was not proceeding. She asked the firm's bookkeeper to contact the Law Society to ask, but did not inform the bookkeeper of any details, such as the amount of the funds or information about the client or the sender of the funds. The bookkeeper spoke with the Trust Assurance department and made the general inquiry, stating that the funds were provided for a client by an uncle for a real estate transaction that had not proceeded. The Law Society called the bookkeeper back and told her that if it was a client of the firm, it would be fine. The only note kept of the call was made by Louie Yen's assistant. The Law Society had no note of the call.

Louie Yen's legal assistant wrote to the uncle at the email address provided by the client, confirmed that the firm would be paying out the funds to the client, and asked for a mailing address for the firm's records. The uncle provided his mailing address in Hong Kong.

The funds were withdrawn upon the instructions of the client: $300,000 to the client and three cheques to law firms in the amounts of $18,500, $18,750 and $59,900 for purchase deposits. Louie Yen was not acting for the client with respect to these purchases.

A further US$1.7 million was wired to the firm's trust account from the uncle's email address via Luxembourg. Two days later, a bank draft of $1,699,985 was sent to one of the client's companies. There is no indication Louie Yen was providing any legal services to the client or to the company, and there is no indication she knew ahead of time the date of the transfer, the amount of funds or who the funds were coming from.

Approximately US$1,849,971 was further wired to the trust account from Singapore and a US dollar bank draft of essentially the same amount was paid out the same day to the client, on his instructions. Again, there is no indication Louie Yen provided any legal services with respect to these funds or had advance information about the funds or who they would be coming from.

Of the approximately $200,000 remaining in trust, amounts were paid over the course of less than a month in varying amounts to law firms for purchase deposits, to investment funds and nearly $100,000 to the client, all on the instructions of the client. Louie Yen did not provide any services related to the purchase deposits or investments.

Over the next two years, funds continued to be deposited to the trust account in similar fashion, and monies were disbursed to a variety of other law firms, to investment entities, to companies controlled by the client and to the client personally.

A total of US$9,949,688.99 and C$1,274,764.96 were received in trust, and the same was paid out of trust in a total of 45 transactions. Of the amount paid out of trust, only approximately US$1.5 million was transferred directly to the credit of other legal files at Louie Yen's law firm, which included the purchase of commercial property, transfers to a numbered company and the purchase of a property.

Louie Yen did not ask further questions of her client as to why the trust account was being used to receive and disburse funds for which the firm was not doing any legal work. She did not meet with or speak to the uncle who was providing the funds to her client, despite the funds coming in as wire transfers from a variety of sources, including Panama, Singapore and a Singapore bank via Luxembourg. After the initial call to the Law Society, she did not make further inquiries about the propriety of the activity in this file.

The transactions raised red flags with a Canadian bank, which inquired about the source and purpose of the funds. After emailing the client, Louie Yen's assistant responded to the bank and stated the reason was for investments in real estate. The bank asked why a law firm was receiving funds intended as a gift between family members and why the money was coming in via wire transfers from Panama. The questions were directed to the client, who explained that the funds were dividend income from his uncle's business as a brand agent of China's number one brand of rice wine and for the China National Tobacco Corporation. There is no indication Louie Yen asked similar questions of her client before the bank inquired.

DETERMINATION

Louie Yen argued she made appropriate inquiries, given the client was a long-standing client and she had previously provided legal services to him. She opened 16 files for him or related companies during that time period, which included purchases of commercial buildings, creating a family trust for the client, incorporating companies and drafting a shareholders agreement and acting for him in connection with the purchase, joint venture and financing of a property. Her understanding was she was performing substantial legal services for the client and his related companies, and she believed this was sufficient reason for her to receive funds into trust, even if the funds were not connected to any specific legal file at the time of deposit or withdrawal from trust.

The panel stated that it was not enough that a lawyer did other legal work for a client that deposited money into the lawyer's trust account — the legal work must be in connection with the trust matter. The panel found that Louie Yen's trust account was used as a bank account, which the client could make deposits to and transfer money out of at will.

The panel also considered that Louie Yen did not make any inquiries of the client despite numerous red flags, including: she had not seen the contracts of purchase and sale; she did not know the client's uncle; the money came from a variety of sources; the value of the deposits was different from what was initially discussed; the client asked for the value of the deposit to be paid out within a day of deposit; there was no explanation as to why further deposits were made into trust; the money was being deposited into a non-interest bearing account despite the client's concern about maximizing investments; and the money had been deposited from Panama at a time when the Panama Papers were in the media.

The panel determined Louie Yen committed professional misconduct by permitting the use of her trust account for deposits and withdrawals without providing any legal work in connection with the transactions, failing to make necessary inquiries, failing to record the results of the inquiries and failing to record the source of the funds with respect to three deposits.

DISCIPLINARY ACTION

The panel found that Louie Yen was wilfully blind in allowing her firm's trust accounts to be used and manipulated, though it could not definitely conclude any money laundering had occurred. The panel noted it was not its role to make that determination, but emphasized that lawyers are gatekeepers of their trust accounts. The panel found her conduct reflected poorly on the legal profession and required a substantial penalty.

Louie Yen maintained at the facts and determination hearing she did nothing wrong, but at the disciplinary action phase, she acknowledged the misconduct and apologized for it. She reassured the panel that this type of conduct would not happen again and detailed the steps she had taken to protect against it. The panel remained troubled that the client involved in the matter continued to be her client and she did not ask him for any further information regarding the transactions.

Louie Yen submitted that the panel should consider *Charter* values, how her suspension would impact her Cantonese-speaking ethnic client base and how difficult it would be for her clients to find a Cantonese-speaking lawyer in the Lower Mainland. The panel considered guidance from a case outlining factors to consider when sanctioning a racialized lawyer and found that the need for general deterrence and protection of the public outweighed any negative impact on her clients or employees.

The panel ordered that Louie Yen:

1. be suspended for three months; and
2. pay costs of $35,209.83.

Louie Yen has applied for a review of the hearing panel's decisions. The Law Society has applied for a review of disciplinary action.

AMARJIT SINGH DHINDSA

Abbotsford, BC

Called to the bar: June 8, 2001

Voluntarily withdrew from membership: May 27, 2021

Review date: March 4, 2021

Review board: Elizabeth J. Rowbotham (chair), Gavin Hume, QC, Jacqueline McQueen, QC, Ruth Wittenberg and William R. Younie, QC

Decision issued: August 3, 2021 (2021 LSBC 33)

Counsel: Ilana Teicher for the Law Society; Duncan K. Magnus for Amarjit Singh Dhindsa

BACKGROUND

A hearing panel determined that Amarjit Singh Dhindsa had disclosed his Juricert password to two members of his law firm staff and, for a period of over three years, permitted his staff to affix his electronic signature to documents filed with the Land Title Office. The panel determined that such conduct constituted professional misconduct (2019 LSBC 11). After a hearing on disciplinary action the panel determined that the appropriate discipline was a four-month suspension (2020 LSBC 13). Dhindsa filed a notice of review seeking a dismissal of the citation in its entirety or, in the alternative, that a fine or shorter suspension be substituted for the disciplinary action.

DECISION OF THE REVIEW BOARD

The review board considered Dhindsa's submissions, which claimed that the hearing panel displayed a reasonable apprehension of bias toward him and made errors in its treatment of evidence and procedural rulings.

The review board determined the panel was correct in refusing to admit an affidavit sworn by a conveyancer employed by Dhindsa who could not attend the hearing. It also determined the panel did not err when it stated that no other employees were called to verify Dhindsa's practice of remotely logging in to Juricert documents — the panel was simply stating the evidence that was before it.

The review board also dismissed Dhindsa's position that the panel failed to consider or misapprehended evidence. The panel considered all submissions at the hearing; it was not required that the panel's reasons discuss all of the evidence or all submissions.

The review board concluded that Dhindsa was not prejudiced by the panel permitting the Law Society to call a rebuttal witness and the panel did not place undue reliance on the personal demeanour of any particular witness. The review board also reviewed the panel's comments at the hearing and determined that it did not demonstrate a reasonable apprehension of bias.

In considering the disciplinary action imposed by the panel, the review board noted the seriousness of the misconduct, Dhindsa's significant professional conduct record and the fact that this was the first instance where the sharing of a Juricert password was dealt with by citation. The review board reduced the suspension imposed by the panel by half and ordered that Dhindsa be suspended for two months.

JEREMY DANIEL KNIGHT

Kamloops, BC

Called to the bar: May 4, 2015

Ceased membership for non-payment of fees: January 1, 2018

Written materials: April 9 and August 17, 2020

Hearing date: July 7, 2021

Decisions issued: October 15, 2020 (2020 LSBC 48) and September 3, 2021 (2021 LSBC 36)

Hearing panel: Michael Welsh, QC (chair), David Layton, QC and Brendan Matthews

Counsel: Tara McPhail for the Law Society; Jeremy Daniel Knight appearing on his own behalf

PRELIMINARY APPLICATION

Jeremy Daniel Knight applied to the hearing panel to request more time to gather expert medical evidence with respect to his addictions and to postpone the facts and determination phase decision while he did so. He described his circumstances as similar to the decision in *Law Society of BC v. Ahuja*, in which expert evidence was part of the panel's deliberations.

The Law Society submitted that Knight had ample time to consider the decision released in August 2019 and to seek expert evidence. Counsel also pointed out that Knight had admitted to misappropriating client funds in the agreed statement of facts.

The panel considered that Knight acted for himself and that he underwent treatment for substance abuse on two occasions. This supported his assertion that he had sought treatment for his addictions.

The panel disagreed with the Law Society's submission that Knight admitted to misappropriation — it found that it is for a panel to determine whether a legal finding of misappropriation should be made. It also found it would be useful for the panel and the parties to have the guidance of the review board decision in *Ahuja*, which may be rendered by June.

The panel found little, if any, prejudice to the parties in waiting for several weeks to allow Knight to gather expert medical evidence. The panel decided to defer the facts and determination phase decision until June 22, 2020 when the panel would decide whether to accept further evidence or submissions and, if so, what additional time would be allowed. (2020 LSBC 19)

FACTS

In 2016, Knight removed himself from the practice of law for approximately a month and a half for treatment of substance abuse issues. On the recommendation of a Law Society practice advisor, Knight contacted the Practice Standards department to seek help in resuming the practice of law. He entered into a three-year relapse prevention agreement, which set out his obligations under a monitoring program.

In September 2016, the Practice Standards department ordered a practice review and asked Knight to provide an undertaking to report noncompliance with the relapse prevention agreement. On June 8, 2017, the Practice Standards Committee ordered Knight to cease practising law until he provided a medical report stating he was fit to practise. On January 1, 2018, his membership ceased for non-payment of fees.

While practising law in 2017, Knight was retained to represent a client in a criminal matter. He asked her for a $1,000 retainer to hold in trust. She electronically transferred $700 to his email address, and he deposited it into his personal bank account, which was overdrawn by $1,035.72. He withdrew $600 the same day. A few days later, the client

electronically transferred another $300, which Knight again deposited into his personal bank account. He withdrew $260 the same day.

Knight did not issue and deliver a bill to his client prior to depositing her funds, nor did he perform legal services entitling him to the $1,000. Over the course of the retainer, he spent 30 minutes working on her file. He failed to record the receipt of funds and did not issue a receipt. Knight emailed the client approximately a month later to tell her he was unable to continue as her lawyer because he was on medical leave for a few months.

A lawyer sent a letter to Knight's law firm advising that she had been retained to handle the client's matter and asking for a transfer of trust funds. The principal at the law firm determined her firm never opened a file for the client, as the firm was unaware the client had retained Knight and sent him a retainer. The client's new lawyer advised the principal her client had transferred the funds to Knight's personal email address, at his request.

On a separate matter in 2016, Knight was retained by another client to act for him on several criminal matters. At Knight's request, the client's partner sent two electronic transfers totalling $4,000, which the law firm deposited into trust.

At Knight's request, the client's partner provided him with $480 cash. He gave her a receipt, which stated the money was paid "for legal fees." Knight did not deposit the cash into the law firm's trust account, nor did he account for the funds in any other way.

Knight rendered an account to his client for $3,368.73, which included a disbursement of $345 for a medical report. There is no evidence the account was ever sent to the client. The law firm transferred $3,368.73 from trust in payment of this account. At Knight's request, the client's partner later sent $345 to Knight's personal email address to pay for the medical report. Knight deposited the funds into his personal account, without telling the partner that the report had already been paid from trust.

Knight texted the client's partner to explain the client had been arrested and a bail hearing would be held the next morning. He requested $1,000, which he deposited into his personal account. The client's partner asked Knight if he needed the $1,000 for bail, and Knight responded that it was required for his work on the matter. He offered to return the money if the client's partner did not agree to pay his legal fees. She agreed to pay.

Knight emailed the client's partner to request a further $2,000 to "top up" the retainer, stating that the $650 in trust would be "used up very easily" in preparing for the client's sentencing on the initial charges. The client's partner transferred $2,000 to Knight's personal email address, and he deposited the funds into his personal bank account.

The client's partner asked for a receipt or invoice for her file. Knight did not provide her with a copy of the account and did not explain what he had done with the previous four payments he had deposited into his personal accounts. The client's partner sent another electronic transfer of $2,000 to Knight's personal email, which Knight deposited into his personal account. There is no evidence to explain the impetus for this transfer.

Knight issued an invoice for $631.26 for services rendered within a 17-day period, which was paid out of the funds remaining in the law firm's trust account. During that period, Knight's timesheet recorded only one hour of work. There is no evidence the invoice was sent to the client or the client's partner.

The law firm's principal took over the file and issued a statement of account to the client and the client's partner. The principal conducted further inquiries, learned Knight had mishandled money received from the client's partner, and made a complaint to the Law Society.

DETERMINATION

In the first matter, the panel determined Knight misappropriated some or all of $1,000 provided to him by the client as a retainer, failed to deposit the funds into a trust account, deposited the funds into his personal bank account prior to rendering a bill for legal services and failed to record all funds received and disbursed. The panel concluded that, despite his claim that he deposited it into his personal account because of a "lapse in judgment," Knight knew he was not authorized to deposit the amounts into his personal account. The first of the transfers occurred days prior to the weekend on which he claims to have been impaired.

In the second matter, the panel found that Knight misappropriated some or all of $5,825 provided to him for payment of retainers and/or disbursements, failed to deposit the retainer and/or disbursement funds into a pooled trust account, deposited the funds into his personal bank account prior to rendering a bill for legal services and failed to account for the receipt of funds.

The panel determined that Knight committed professional misconduct by misappropriating retainer and/or disbursements funds provided to him and using the funds for a purpose he knew was not authorized by his client or his client's partner.

DISCIPLINARY ACTION

The panel considered the serious and intentional nature of Knight's misconduct and his professional conduct record, which included practice standards requirements related to his substance use issues. Knight has apologized to his former employer, acknowledged his misconduct and taken steps to address his substance use issues, and the panel considered these to be mitigating factors.

The panel ordered that:

1. Knight be suspended for a minimum of 16 months and appear before a board of examiners appointed by the panel or the Practice Standards Committee to satisfy the board of examiners that his competence to practise law is not adversely affected by a dependency on alcohol or drugs;
2. upon return to practice, Knight be subject to practice conditions including that he must practise in a firm setting with at least one other practitioner, he must practise under a supervision agreement, he is prohibited from operating a trust account and from

having any signing authority over a trust account and he must enter into and comply with a medical monitoring agreement; and

3. Knight pay costs of $5,219.63.

TRUST PROTECTION COVERAGE

In every profession, there are occasionally members who are dishonest. Although not all professions or industries protect victims of their dishonest members, the legal profession in BC has, since 1949, provided financial protection to members of the public whose money has been stolen by their lawyer. If a claim is made against a lawyer relating to the theft of money or other property, Trust Protection Coverage (TPC) 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 *Law Society of BC v. Knight* (2020 LSBC 48), a TPC claim was made against Knight and the amount of $6,006 was paid. He is obliged to reimburse the Law Society in full for the amount paid under TPC. For more information on TPC, including what losses are eligible for payment, go to Compensation: Claims for Lawyer Theft.

GEORGE ROLAND HOLLAND

Kelowna, BC
Called to the bar: September 10, 1980
Consent agreement accepted: September 15, 2021

FACTS

George Roland Holland was suspended for practising law for a period of approximately one month while administratively suspended. The administrative suspension resulted from his failure to complete his annual continuing professional development, as required by the Law Society Rules.

CONSENT AGREEMENT

Holland acknowledged that he failed to apprehend the serious nature of the suspension, that he exercised poor judgment and that his conduct constituted professional misconduct.

Holland agreed to be suspended from the practice of law for one month. In accepting the consent agreement, the chair of the Discipline Committee considered the agreed facts and Holland's professional conduct record, which consists of one prior administrative suspension for failure to complete his continuing professional development.

AMANDA JANE ROSE

New Westminster, BC
Called to the bar: May 4, 2011
Ceased membership: January 1, 2020
Undertaking and admission accepted: September 23, 2021

FACTS

The Law Society performed a compliance audit of Amanda Jane Rose's practice in January 2017 for the previous three years. During those three years, Rose operated three pooled trust accounts and was the sole signing officer on all three trust accounts. Shortly after the audit, Rose provided an undertaking that she would only operate her trust accounts under the supervision of a trust supervisor approved by the Law Society. The trust supervisor was to be a second signatory on her trust accounts. Almost a year later, she gave the same undertaking for the second time.

A few months after she gave the undertaking, Rose was retained by a client for a family law matter and received funds in trust. She opened a business investment account and deposited $816,908.94 in trust funds into the account. She later withdrew a total of $749,948.28 from the account on behalf of her client, leaving a balance of $67,718.25 that should have been held on her client's behalf. She later withdrew the funds from her account without her client's knowledge or consent. She did not disclose the account on her trust report and did not provide her trust supervisors with information related to the receipt and withdrawal of the funds.

The investigation also revealed the following misappropriations.

Over the course of almost two years, Rose made 17 withdrawals from her pooled trust accounts totalling $48,696.81. Twelve of the withdrawals were unrelated to client matters, and five were to pay invoices that had already been paid. There were three online transfers totalling $2,250 from the trust account to her personal account, five online transfers totalling $30,100 to her general account when it was overdrawn, four withdrawals from trust by way of cheques totalling $10,212.76 to pay for her employee's wages and five withdrawals from trust totalling $6,134.11 to pay her fee invoices that had already been paid.

In another matter, a lawyer had transferred his practice to Rose's firm and brought a client's file with him. The legal fees rendered were to be split between the lawyer's former firm and Rose's firm. Rose's firm received a settlement cheque in trust for $78,104.51, and she deposited it into her general account. At the time, she needed additional funds to cover her operating expenses. She later received instructions from the lawyer to disburse the funds to the client, her own firm, the lawyer's former firm and a third party for a disbursement. Rose issued a cheque for $11,157.34 from her general account to the lawyer's former firm, which was subsequently returned for non-sufficient funds.

Rose received a $2,000 retainer and a $1,000 retainer from a client, and she deposited both retainers into her general account instead of her trust account and used the funds for her operating expenses. She later received five further retainers from the client totalling $7,900, which she properly deposited into her pooled trust account. She made a total of 11 withdrawals from her pooled trust account on the client's behalf when she did not hold sufficient funds to the credit of the client. This resulted in a series of trust shortages totalling $8,470.25, at a time when Rose knew she did not hold sufficient funds on the client's behalf.

Rose received a retainer of $2,500 from another client and deposited it into her general account instead of her trust account. She used the

retainer funds for her operating expenses. She received three further retainers from the client totalling $7,792.36, which she properly deposited into her pooled trust account. She later made seven withdrawals that resulted in a series of trust shortages in the pooled trust account, totalling $9,313.12. Rose knew she did not hold sufficient funds on behalf of the client when she made the withdrawals.

Rose gave an undertaking to the Law Society not to operate a trust account without a second signatory and to provide her trust supervisor with information and documentation related to any trust transaction. She opened and operated an undisclosed account without her trust supervisor's knowledge or consent, and later made deposits and withdrawals from the account without a trust supervisor in place.

Approximately one year later, she provided another undertaking to replace the previous one, which stated she would only operate her trust accounts with the trust supervisor and would not make or authorize a withdrawal or transfer from a trust account unless the trust supervisor was a second signatory and had approved the transaction. She breached the undertaking again and made deposits and withdrawals from an undisclosed account without the knowledge of the supervising lawyer.

Rose gave an undertaking to the Law Society in 2019 to not engage in the practice of law and to change her status to non-practising. She continued to hold herself out as a practising lawyer for nearly six months.

Rose also made misrepresentations in two trust reconciliations, one trust report and other correspondence to the Law Society. She falsely told the Law Society she had corrected trust shortages and that the shortages had been reimbursed, and forged her accountant's and assistant's signatures on a reconciliation emailed to the Law Society. She also did not list an undisclosed account she opened and operated in her trust report and confirmed in an email and a letter to the Law Society that she had no other trust accounts, when it was not true.

ADMISSION AND UNDERTAKING

Rose admitted her conduct constituted professional misconduct and provided an undertaking to the Discipline Committee that, for a period of 15 years, she will:

1. not engage in the practice of law in British Columbia;
2. not apply for readmission to the Law Society or elsewhere in Canada;
3. not apply for membership in any other law society (or like governing body regulating the practice of law) without first advising the Law Society in writing; and
4. not permit her name to appear on the letterhead of, or otherwise work in any capacity whatsoever for, any lawyer or law firm in British Columbia without obtaining the prior written consent of the Discipline Committee.

In deciding to accept the proposal, the Discipline Committee considered a notice to admit and a letter to the chair of the Discipline Committee in which Rose admitted her misconduct. The committee also considered her professional conduct record, which included three administrative suspensions, three undertakings to the Law Society and two sets of recommendations made by the Practice Standards Committee.

ZAO (AIDAN) HUANG

Surrey, BC
Called to the bar: August 14, 2018
Consent agreement accepted: September 28, 2021

FACTS

Zao (Aidan) Huang admitted that he threatened an adult family member with bodily harm, intimidated her and assaulted her on two separate occasions. He also admitted he struck a minor with a weapon or imitation weapon. He was charged with two counts of assault, one count of uttering a threat and one count of assault with a weapon or an imitation weapon. The charges were later withdrawn.

Since his criminal charges, Huang has attended a number of counselling sessions. He said that he has realized the impact of his mistakes and has expressed remorse to his victims.

CONSENT AGREEMENT

Huang admitted his conduct constituted conduct unbecoming the profession and agreed to be suspended for three months. In accepting the consent agreement, the chair of the Discipline Committee considered an agreed statement of facts and the fact that Huang did not have a pre-existing professional conduct record.❖

Conduct reviews ... from page 19

partner's assistant. Upon learning about his breach of the Code from the Law Society, the lawyer spoke to the managing partners of his firm regarding internally transferring files where there are shareholder disputes. He now understands that these files are potentially problematic in terms of conflicts. In future, the lawyer will not rely on the representations of others to assess possible conflicts and he will conduct searches related to the firm's named clients, files and invoices. CR 2021-49❖

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