The Law Society of British Columbia

2021: No. 1 • SPRING

BENCHERS' BULLETIN

Keeping BC lawyers informed

Improving our services to adapt to the new normal

by Don Avison, QC

WE RECENTLY PASSED the one-year mark of the declaration of a provincial health emergency, which was quickly followed by a state of emergency declared in response to the COVID-19 pandemic. At the time, I thought the disruption to our lives and business operations would last a short while and things would be back to normal in a few weeks or months. The pandemic has lasted longer than expected, which has required us to extend our health and safety measures a little longer.

During this time, productivity in most areas of operation has remained high. In fact, our Trust Assurance team nearly matched its record for audits in a year, conducting over 630 in 2020. Our Professional Regulation group also kept pace with pre-pandemic levels of activity, issuing a similar number of citations and completing more hearings than in the previous year. Practice advisors are as busy as ever, with a slight increase in the number of calls and emails they received year over year. And we have added infrastructure within the Law Society offices over the past several months to safely reintegrate more staff to the workplace, as we look to improve service levels even further.

We are also implementing new measures that the Benchers adopted to protect law firms and client information from cybercrime. Cyberattacks have increased during the pandemic, affecting a range of industries. To protect the public from having their legal information placed at risk by ransomware, data breaches and social engineering fraud schemes, the Lawyers Indemnity Fund will provide cyber coverage for all law firms it indemnifies when everything is in place and the policies take effect on June 1, 2021.

The Law Society will also be making permanent some of the "temporary" measures we implemented to get us through the pandemic, particularly where they have improved our operations. The use of technology, such as Zoom meetings, for example, enabled the Tribunal to resume operations, and Benchers and committees are meeting regularly to conduct their affairs. Staff meet stakeholders and each other virtually as well. Even after in-person meetings are allowed to resume, the ability to engage with stakeholders over virtual platforms will help us be more timely, cost-effective and responsive, and will be part of our ongoing plans.

The bottom line has been that we are able to make these improvements in services and meet stakeholders where they live and work without increasing costs to the lawyers we license. Practice fees for the current year have been maintained at the same level as last year. Costs for the new cyber coverage will be borne by LIF, which has already been delivering some of the broadest coverage for one of the lowest fees in the country. On top of these benefits to all lawyers in BC, the Law Society was also able to fund fee relief targeted to firms hardest hit by the pandemic.

To protect the public from having their legal information placed at risk by ransomware, data breaches and social engineering fraud schemes, the Lawyers Indemnity Fund will provide cyber coverage for all law firms it indemnifies when everything is in place and the policies take effect on June 1, 2021.

While the development of vaccines provides us all with hope that the pandemic will soon be behind us, delays in production and distribution remind us that we must remain focused on adapting and improving, to deal with the challenges we face as we serve the public interest.❖

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).

Lawyers encouraged to participate in innovation sandbox

DO YOU HAVE an idea for improving access to legal services for those who experience a legal issue or problem but who do not seek any assistance? Perhaps it involves people who are not traditional legal service providers or the use of AI and other technologies. Maybe it involves changes to business structures or practices to enable more efficient and cost effective delivery of legal services.

The Law Society encourages lawyers and others seeking to pilot new ways of delivering legal services to submit proposals for participation in the Law Society's innovation sandbox. The sandbox provides the Society with the opportunity to permit approved start-ups and other innovators to test and evaluate new ways of delivering legal services in a controlled and supervised environment. In some instances, this may require the Law Society to relax current regulations over who may practise law or law firm ownership, in order to leverage expertise from other areas and industries to improve access to legal services.

To learn more about the innovation sandbox and how to submit a proposal, visit our website.❖

Coming soon: Indigenous intercultural competency course

THE LAW SOCIETY continues making progress on the development of the Indigenous intercultural competency course that was mandated by the Benchers at the end of 2019. While the course was originally set to launch in January 2021, work on some parts of the course was disrupted by the COVID-19 pandemic. The course development is underway, and the Law Society expects to finalize it in the coming months.

Once the course is launched, lawyers will still be given up to two years to complete all modules, and it will still be free of charge, available online, and eligible for continuing professional development credits.❖

In memoriam

WITH REGRET, THE Law Society reports the passing of the following members in 2020:

Sky R. Anderson
Mark D. Andrews, QC
Joseph J.M. Arvay, QC
Paul Backhouse
Karin Bagn
Dale Y. Banno
Robert T. Banno, QC
Angela M. Boddez
Nancy E. Brown, QC
John Campbell
P. Donald Celle
Christopher B. Charbonneau
Lance S.G. Finch, QC
Gregory J. Gartner, QC
Christopher C. Harris
Peter W. Hogg
Paul G. Jarman
Margaret A. Johnson
Frank C.P. Kraemer, QC
Cyril Ross Lander
Jacques Lavoie
Gerald J. Lecovin, QC
Vivek Mehra
Paul R. Miller
P.M. Pakenham
Lawrence R. Plenert
Walter G. Rilkoff
Stephanie A. Sieber
Irene M. Stewart
Bonnie L. Thorpe
G. Ronald Toews, QC
Gordon Turriff, QC
David H. Unterman
Michael Wolfson

Constance D. Isherwood, QC

Mits Naga / Brian Dennehy Photography

Victoria lawyer Constance D. Isherwood, QC died on January 26, 2021 at the age of 101. She had a long and impressive history of serving clients and the public, practising primarily in real estate, family and civil law at the law firm she opened with her late husband in 1963 until the day she passed away.

Isherwood was the first woman to receive the Law Society Award in 2016 and received an honorary doctorate from the University of British Columbia in 2015. She was one of only six women in her graduating class at the UBC law school in 1951, and the first woman to receive the Law Society's gold medal, awarded to the graduating law student with the highest cumulative grade point average.

Throughout her career, Isherwood served as a role model and mentor for many young woman lawyers. In addition to her law practice, she was active as a volunteer and community leader throughout her life. She served as Chancellor of the Anglican Diocese of British Columbia for over 30 years and contributed to local arts and music organizations.❖

FROM THE RULE OF LAW AND LAWYER INDEPENDENCE ADVISORY COMMITTEE

Holding our democracy to account: The rule *of* law vs. the rule *by* law

THE PHRASE "RULE of law" is in the news a great deal. While referred to often, it is rarely well explained, with its true meaning often lost. Despite the fundamental constitutional importance of the concept, if the meaning of "rule of law" is not well understood, there is a significant risk of it being challenged and torn down. The rule *of* law — where the law applies equally and everyone is subject to it — becomes conflated with its antithesis, which is rule *by* law — where those in power can arbitrarily create and apply law as they choose, with no accountability. The rule *of* law provides an orderly method for a society to change and evolve through addressing issues such as inequality and prejudice. Rule *by* law, on the other hand, permits the arbitrary creation and application of the law and excludes the ability to challenge its validity or its application. If the rule *of* law loses public support because it becomes associated in the public mind with the rule *by* law, a most effective method of bringing orderly change in a democratic society to address important societal issues will be lost.

The rule of law is both simple and complex. It is simple because it can be stated simply: The rule of law ensures citizens are governed equally and fairly by the law and not by anyone or anything else. This means that even lawmakers must obey fundamental laws, even while making other laws. On the other hand, the rule of law is complex because once you get beyond its simple premise, its extent is not agreed upon. It has been the subject of much writing, debate, construction and application. Moreover, even as a simple phrase, it is too easily susceptible to being sloganized or weaponized for political purposes. But, at its heart, it is very straight-forward: The laws governing society must be known, with none in society (including lawmakers) outside the law or favoured before it.

In a democracy, officials are elected to create laws that govern the conduct of the people living in the country. Judges interpret laws and make decisions that are binding on the future application of law. The decisions of Parliament or a legislature are interpreted by judges to ensure that they conform to a standard of statutory interpretation, that the Parliament or legislature has jurisdiction to make them and that the laws conform to the constitution. Lower court decisions are subject to review by appellate courts to ensure proper application of legal principles. Where a decision is made by a court, the order is binding and a breach of the order is subject to consequences. The laws passed by Parliament or by a legislature are binding on everyone, but there is a process through which the application of those laws can be challenged on the basis of legal principles. Laws cannot, however, be ignored simply because they are inconvenient. All this results in a structure of governance with an orderly process for the review of laws, their legality and their application in any given situation. The rule of law requires that people know what the law is, meaning that governments cannot obscure the law and then purport to apply it at a later date against an unsuspecting citizen.

The rule of law also requires the equal application of laws. It is on this point that, in many Western democracies including Canada, the rule of law is sometimes particularly challenged on the basis that the law is not applied equally to various groups. This, however, is a failing of society, not a failing of the rule of law. It is the rule of law in particular that permits challenges to the social order on the basis of inequality. While the legal system cannot solve all social problems, the legal system is well designed, through the application of the rule of law, to yield processes to better ensure equal application of law to the people of our country and to strike down laws that target or unfairly affect particular groups. Conduct of administrative officials can be judicially reviewed, and the statutes under which officials act can be challenged on the basis of human rights violations, or violations of other fundamental principles of justice stated in the *Charter*. The rule of law, as described by Tom Bingham in his book *The Rule of Law*, provides that "the law must afford adequate protection of fundamental human rights." Consequently, laws that do not protect these fundamental rights, even as they evolve over time, themselves contravene the rule of law.

Accordingly, the unequal application of law is itself fundamentally contrary to the rule of law. It is to the rule of law that we may look to find protections and remedies where law is applied unequally. Without it, inequality would persist with no hope — short of revolution — of it being addressed or eliminated.

All of this is very much to be contrasted with rule *by* law. Rule *by* law is the

opposite of the rule *of* law. In a society where rule by law applies, those in power choose which laws to apply — or not apply — against which citizens. While each society has a system of laws, the application of the law in a society where rule *by* law exists is arbitrary. Rule *by* law gives cover to authoritarian states where there is little or no freedom because protections guaranteeing that all citizens are governed equally by the law are not assured. There is no guarantee that a challenge brought against the application of a law in a system where the rule by law applies will be effective, or even heard. There likely are no real processes available permitting orderly and serious challenges to the conduct of state officials or others because those in power control all of the levers through which the system operates. Judges will often be required to interpret the application of the law on the basis of the interests of those in power, rather than by a dispassionate analysis of legal principles. The protections afforded by equal application of law no longer apply, and the law becomes subsumed as a tool of the state.

Admittedly, it often appears that even in countries where the rule *of* law governs, the powerful also seem to operate the levers to the legal system, resulting in the unequal application of the law to various groups. A review of current affairs demonstrates governments in Western democracies do pass laws that are intended to have unequal application. This, however, is a failure of government, and it is the rule of law that provides an avenue to hold those governments to account to the law. There is a path to challenging the laws passed on the basis that they violate principles of fundamental justice. Where there is rule *by* law, such challenges will not be permitted.

The rule of law therefore also requires independent judges who can make decisions based on legal principles rather than on political directions, and an independent bar where a lawyer's duty is first and foremost to the client and not to other interests. Both concepts of independence — judicial and lawyer — are integral to the success of the rule of law. Where the rule *of* law applies, lawyers can act on the instructions of their client and are able to freely challenge the conduct of the state or others and ensure that every citizen is entitled to be represented and to have their day in court. Independent lawyers operating in a society governed by the rule of law are able to take instructions from clients to hold the state and its officials accountable to the law without fear, intimidation or reprisal before a judge who will make the decision on the application of the law and not on the directions of the state. This process remains society's best bulwark against authoritarianism. In countries where there is rule *by* law, lawyers may lose their licences to practise, or be imprisoned, when they represent the interests of individuals challenging the actions of the state or other powerful interests.

There are inequities in Canada's justice system. There are problems obtaining access to legal services, and these need to be addressed both by government and by the legal profession. Access to legal advice is integral to ensure there can be proper challenges to unfair or discriminatory laws, or to the unfair or unequal application of the law. But that will be relevant only in a system where we remain vigilant to ensure the rule of law is properly understood, recognized and supported.❖

Listen to the latest episodes on Rule of Law Matters podcast

In September 2020, the Law Society launched the *Rule of Law Matters* podcast to foster greater awareness of the importance of the rule of law in protecting our rights and freedoms. Episodes draw from current events happening here at home, and around the world, to help illustrate the concepts that are integral to the rule of law. Since its launch, the podcast series has been downloaded nearly 4,000 times by listeners in Canada, the United States, the United Kingdom and beyond.

With nine episodes to date, featured guests include Richard Peck, QC on the importance of privacy to freedom and democracy, BC ombudsperson Jay Chalke and health lawyer Tracey Bailey on COVID-19 impacts on the rule of law, and Professor Irwin Cotler on the rise of authoritarianism around the globe and the need for democracies to respond. Cotler recently returned for a third episode in which he examined the attack on the US Capitol in January, as well as reflected on the October Crisis in 1970 and contrasted it with actions of the Chinese and other governments today.

Episodes — including transcripts — are available on our website. But to avoid missing a new episode when it comes out, subscribe or follow on Spotify, Apple Podcasts, or wherever you get your podcasts. If you like the episode, please leave a review and rating and share the podcast with your friends and colleagues. To offer feedback or to suggest topics for future episodes, email us at podcast@lsbc.org.❖

In brief

THANKS TO OUR VOLUNTEERS

The Benchers thank all those who volunteered their time and energy to the Law Society in 2020. Whether serving as members of committees, task forces or working groups, as PLTC guest instructors or authors, as fee mediators, event panellists or advisors on special projects, volunteers are critical to the success of the Law Society and its work.

For more on volunteer opportunities and a list of people who served the Society in 2020, see About Us > Volunteers and Appointments.

JUDICIAL APPOINTMENTS

The Honourable Leonard Marchand, a judge of the Supreme Court of British Columbia in Kamloops, was appointed a justice of appeal of the Court of Appeal for British Columbia. Mr. Justice Marchand replaces Mr. Justice H.M. Groberman (Vancouver), who elected to become a supernumerary judge effective February 1, 2021.

Simon R. Coval, QC, a partner at Fasken in Vancouver, was appointed a judge of the Supreme Court of British Columbia. Mr. Justice Coval replaces Mr. Justice P.G. Voith (Vancouver), who was appointed to the Court of Appeal on September 2, 2020.

F. Matthew Kirchner, managing partner at Ratcliff LLP in Vancouver, was appointed a judge of the Supreme Court of British Columbia. Mr. Justice Kirchner replaces Mr. Justice E. Myers (Vancouver), who elected to become a supernumerary judge effective November 22, 2020.

Andrea Davis was appointed a judge of the Provincial Court in Surrey.

Emmet Duncan was appointed a judge of the Provincial Court in Surrey.

Jodie Harris was appointed a judge of the Provincial Court in Abbotsford. Judge Harris will be sworn in on April 12, 2021.

J. Martin Nadon was appointed a judge of the Provincial Court in Prince George. Judge Nadon will be sworn in on April 6, 2021.

Darin Reeves was appointed a judge of the Provincial Court in Fort St. John.

Michelle Stanford, QC was appointed a judge of the Provincial Court in Williams Lake. Judge Stanford, a Bencher for Kamloops district since 2016, will be sworn in on April 12, 2021.

Diana Vandor was appointed a judge of the Provincial Court in Richmond.

Kimberley A. Robertson was appointed a master of the Supreme Court of BC in New Westminster.

John Walter Bilawich was appointed a master of the Supreme Court of BC in Vancouver. ❖

THE LAW FOUNDATION OF BRITISH COLUMBIA

FROM THE LAW FOUNDATION OF BC

Law Foundation welcomes new chair, board members

The Law Foundation is pleased to announce that, on January 1, 2021, **Lindsay R. LeBlanc** became chair of the Foundation's board of governors. She succeeds Geoff White, who served for six years on the board and as chair in 2019 and 2020. The Foundation thanks White for his commitment over the years and his skilful leadership during a period of transformation.

LeBlanc joined the board in 2017 as the Law Society's appointee for the County of Victoria. She graduated from the University of Victoria Faculty of Law in 2005 and is a partner at Cox Taylor, where she practises administrative, property, municipal, estate and corporate law. Over the past four years, LeBlanc has served at different times as a member of the Law Foundation's Finance and Administration, New Grants, and Class Action Committees. She joined the Policy and Planning Committee in 2018 and took responsibility as chair in 2019.

In addition to being on the Law Foundation board, LeBlanc serves on the Attorney General's BC Supreme Court Rules Committee, the Law Society's hearing panel pool and the Irving K. Barber BC Scholarship Society, where she chairs the Indigenous Awards Committee. She was a governor to the University of Victoria for six years, until 2017. LeBlanc continues to sit on the University of Victoria's Property Board and has served on the Canadian Bar Association Aboriginal Law Student Scholarship Trust Committee and the Vancouver Island Sexual Health Society.

The Law Foundation is also happy to announce two new appointments to its board of governors at the start of 2021.

Sarah Runyon is the Law Society's appointee for the County of Nanaimo. Called to the bar in 2013, Runyon is a partner with Marion & Runyon in Campbell River and practises criminal litigation and appeals. She is a frequent consultant for non-profit, criminal law reform and drug policy organizations.

Runyon earned her law degree at the

University of Victoria, where she served as editor-in-chief of the *Appeal* law journal and received numerous academic accolades, including the J.S.D Tory Prize for both oral and written advocacy. After graduation, she served as a judicial law clerk with the BC Supreme Court. In 2019, Runyon received the prestigious Fulbright Scholarship for her research on criminal law reform. She has an LLM from the University of Arizona's Indigenous Peoples Law and Policy program and the Harvard Project on American Indian Economic Development.

She currently serves as a director of the North Island John Howard Society and is an advisory board member of Campbell River's Coalition to end Homelessness.

Zara Suleman joins the board as the Law Society's representative for the County of Vancouver. She was called to the bar in 2007 and is the founder of Suleman Family Law where she practises family law and fertility law. Suleman is a certified family law mediator and collaborative law practitioner.

She earned her bachelor of arts degree from Simon Fraser University, her law degree from the University of Ottawa and her master of laws from the University of Victoria. She was the director of the Family Law Project for the West Coast Women's Legal Education & Action Fund in 2007.

Currently, Suleman is the chair of the BC Law Institute's research project Review of Parentage under Part 3 of the *Family Law Act*. She is also an advisory member of the Department of Justice Family Violence Initiative, the FREDA Centre for Research on Violence Against Women and Children and the BC Society of Transition Houses Technology Safety Project. Prior to law school, Suleman worked as a front-line anti-violence advocate and immigrant and refugee family support worker. She was the 2018 recipient of the Equality and Diversity Award from the Canadian Bar Association, BC Branch.❖

Unauthorized practice of law

THE LAW SOCIETY protects the public by taking action against individuals who are not authorized to provide legal services and are not approved participants in the innovation sandbox initiative, where they pose a significant risk of harm to the public.

Between November 27, 2020 and March 1, 2021, the Law Society obtained four written commitments from individuals and businesses to cease engaging in unauthorized practice of law. These individuals and businesses put the public at risk by performing unregulated and uninsured legal services or by misrepresenting themselves as lawyers. If they break their commitments, the Law Society may obtain a court order against them.

The Law Society also obtained two court orders prohibiting the following individuals and businesses from engaging in the unauthorized practice of law.

On January 26, 2021, Madam Justice Ahmad issued an injunction order permanently prohibiting **Daniel Lozinik**, of Calgary, Alberta, from engaging in the practice of law for a fee and from representing himself as being a lawyer, a law firm, a law corporation or any other title that connotes he is entitled or qualified to engage in the practice of law. The Law Society was also awarded costs in the amount of $1,500.

On February 4, 2021, Mr. Justice Blok issued a consent order prohibiting **Garreth John Westwood** from engaging in the practice of law for or in the expectation of a fee except as permitted by the *Immigration and Refugee Protection Act* and from representing himself or any entity that he controls as being a lawyer, a solicitor, a law firm, a law corporation, or any other title that connotes that he is qualified or entitled to engage in the practice of law, except as permitted by the *Immigration and Refugee Protection Act*. The court also granted the Law Society costs of $2,500.

To read the orders, search by name in the Law Society's database of unauthorized practitioners.❖

Articling offers by downtown Vancouver firms to stay open until August 20

ALL OFFERS OF articling positions made in 2021 by law firms with offices in downtown Vancouver must remain open until 8 am on Friday, August 20, 2021. Downtown Vancouver is defined as the area in the city of Vancouver west of Carrall Street and north of False Creek.

Set by the Credentials Committee under Law Society Rule 2-58, the deadline applies to offers made to both first- and second-year law students. The deadline does not affect offers made to third-year law students or offers of summer positions (temporary articles).

If the offer is not accepted, the firm can make a new offer to another student within the same day. Law firms cannot ask students whether they would accept an offer if an offer was made, as this places students in the very position Rule 2-58 is intended to prevent. If a law student advises that the student has accepted another offer before August 20, the firm can consider its offer rejected.

If a third party advises a lawyer that a student has accepted another offer, the lawyer must confirm this information with the student. Should circumstances arise that require the withdrawal of an articling offer prior to August 20, the lawyer must receive prior approval from the Credentials Committee.

For further information, contact Member Services at 604.605.5311.❖

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

Forming companies and other structures – managing the risk

HAS A POTENTIAL new client come to you with a complicated corporate structure that didn't make sense in the circumstances?

Has a client asked you to create a new company, but the client had no business or business plan?

In both of these instances, be on guard. While in the vast majority of cases companies and the persons behind them are legitimate, there is a risk of illegal activity associated with corporate structures. Heighten your diligence with respect to knowing the client, understanding the client's financial dealings in relation to the retainer and managing risks when you are asked to create new structures, such as corporations, partnerships and trusts.

Such diligence includes asking enough questions and obtaining satisfactory answers before acting or continuing to act for the client. Before proceeding with a matter, be aware of the suspicious circumstances that should trigger you to make reasonable inquiries to mitigate against the risk that the parties are facilitating dishonesty, crime or fraud, including money laundering. See the Federation of Law Societies of Canada's Risk Advisories for the Legal Profession (December 2019), the Risk Assessment Case Studies for the Legal Profession (February 2020), *BC Code* rules 3.2-7 to 3.2-8 and commentaries, and the Fraud Alert (March 4, 2021) regarding random calls and emails inquiring about shelf companies. Fraudsters may attempt to use shelf companies to deceive unsuspecting third parties into believing that a company has been in operation for a number of years when, in reality, it hasn't been used since its formation. Be on guard against being used to facilitate dishonesty, crime or fraud.

Below are some examples of questions regarding companies and other structures that have come up in conversations I have had about knowing your client.

1. Should I verify the identity of the individual instructing me to incorporate a company?

Yes, you should verify the identity of individuals instructing you to incorporate a company or create other structures (see the definitions of "financial transaction" and "money" in Law Society Rule 3-98). Unfortunately, companies are attractive

vehicles for criminals, because they provide some anonymity to the persons who own and control them.

The provincial and federal governments have taken steps to address this problem, and further measures are anticipated. For example, companies incorporated under the *Business Corporations Act* are required to maintain a transparency register of significant individuals (effective October 1, 2020). Corporations incorporated under the *Canada Business Corporations Act* are required to create and maintain a register of individuals with significant control over the corporation (effective June 13, 2019).

As of November 30, 2020, when an interest in land is registered in BC's land title registry, a transparency declaration must be filed in the Land Owner Transparency Registry by the transferees. In addition, if a transferee is a reporting body, a transparency report, setting out information about a reporting body (relevant corporation, trustee of a relevant trust, partner of a relevant partnership) and its interest holders, must be filed.

Following recommendations by the Financial Action Task Force, the global anti-money laundering body, and other reports, discussions are underway with respect to the prospect of creating a corporate beneficial ownership registry for British Columbia and other Canadian jurisdictions. See, for example, the B.C. Consultation on a Public Beneficial Ownership Registry (January 2020, Ministry of Finance).

2. Is there a "financial transaction" when forming a company?

Generally, yes. See the definitions of "financial transaction" and "money" (includes shares) in Law Society Rule 3-98. To form a limited company under the *Business Corporations Act*, for example, an incorporation agreement must contain the agreement of each incorporator to take one or more of the company's shares in each incorporator's name (s. 10(2)). The issue price for shares must be set, and a share must not be issued until it is fully paid — a financial transaction (ss. 63 and 64). Subsequently, the incorporator (likely you or someone in your firm) typically transfers the incorporator's shares to the permanent shareholders or the permanent shareholders repurchase the incorporator's shares — another financial transaction. I recommend that you verify a client's identity if you are forming a company or other structure.

3. What are some examples of questions that I might ask a new client who wants to retain me to create a new company or other structure?

Ask enough questions and obtain enough information in order to know your client, understand the client's objectives and feel comfortable that the client isn't attempting to use you to facilitate any dishonest or illegal activities (Rules 3-99(1.1) and 3-107 and *BC Code* rule 3.2-7). Make a record of the results of your inquiries. If you are not comfortable with the results, do not act. To increase your familiarity with red flags, review the Federation's Risk Advisories for the Legal Profession, the Risk Assessment Case Studies for the Legal Profession (includes the Red Flags Quick Reference Guide) and *BC Code* rule 3.2-7 and commentaries. Below are some questions to consider:

- Is there another party that the client represents or on whose behalf the client acts with respect to obtaining the legal services? If yes, who is the other party, and what is their role?
- What is the client's business or legal reason for wanting to use the particular structure? Does it make sense in the circumstances?
- What is the purpose of using a complex or unusual structure? Do you understand it? Does it make sense?
- Who would have control of the entity or entities involved? Who are the legal and beneficial owners?
- If the client resides outside of Canada, why has the client chosen to incorporate in BC?
- Does the client or another party to the proposed legal services reside in or have a material connection to a high-risk country?
- Does the client have a bank account in Canada? If not, are they able to open one?
- Does the client currently operate a business in BC? What is the client's current business?

Services for lawyers

Law Society Practice Advisors

Barbara Buchanan, QC
Brian Evans
Claire Marchant
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.

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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

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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

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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.

- Does the client have a business plan for the new company?
- Is the client's history or experience consistent with the business plan or objective of the retainer?
- Why did the client choose you to act?
- Does the client want you to perform any legal services other than forming the company?

4. What are some red flags to consider when a client wants me to form a new company or other structure for the client?

Following is a list of red flags, which in isolation are not proof of illegal activity. They are simply indicators that the client and the proposed legal services deserve scrutiny when deciding whether to act, or to continue to act, for the client.

- A potential new client asks you to incorporate a company and provide no other legal services.
- The reason for incorporating the company is vague.
- The client wants complex group structures with no apparent legitimate reason.
- You have not previously met the client, and the client doesn't want to meet in person.
- The reason for choosing you is odd given your location or practice area.
- The client has no existing business or business plan in BC or in Canada.
- The client mentions a vague business in another country.
- The client is a director of companies in multiple jurisdictions but is unable to provide much information about the companies.
- The client or others are citizens or residents of a country that poses a geographical risk.
- The client is a politically exposed person, or a family member is one.
- The client instructing you will not be the real owner of the company; i.e., there will be beneficial ownership.
- You have difficulty obtaining the necessary, reliable information to identify and verify the client's identity, or the client seems unusually familiar with the verification requirements.
- The proposed retainer is from a foreign bank outside of Canada.
- A third party with no obvious connection to the company provides the retainer.
- The client is willing to pay a high fee for the legal services.
- The client provides a retainer in an amount higher than requested.

Here are some resources that you may find helpful in identifying risks and red flags:

- Risk Assessment Case Studies for the Legal Profession (February 2020) – see Creation and Management of Trusts and Companies (pp. 8-10) and Red Flags Quick Reference Guide (pp. 24-28);
- Risk Advisories for the Legal Profession (December 2019) – see AML Risk Advisory: Shell Corporations (p. 5) and AML Risk Advisory: Trusts (p. 10);
- Discipline Advisory, Securities Fraud: Micro-cap Stocks (June 1, 2020);
- Discipline Advisory, Country/Geographic Risk (February 10, 2021).

FOR MORE INFORMATION

If you have questions about this article, client identification and verification or anti-money laundering, or you wish to discuss a possible scam, you are welcome to contact me at bbuchanan@lsbc.org or 604.697.5816. For more resources, see Client ID & Verification and Anti-Money Laundering. Please contact an auditor for trust account and general account questions at trustaccounting@lsbc.org or 604.697.5810.❖

LAWYERS INDEMNITY FUND

FROM THE LAWYERS INDEMNITY FUND

Suspension of limitation periods – your questions answered

THE SUSPENSION OF limitation periods, in effect since March 26, 2020, is no longer tied to the provincial state of emergency declared under the *Emergency Program Act* and ended one year after the suspension began.

It started at the beginning of the day on March 26, 2020 and was lifted at the end of the day on **March 25, 2021** (see the order). ***There is no further transition or grace period beyond March 25, 2021.***

This does not mean that all limitation periods automatically ended on March 25, 2021 — the examples in the following table show how your limitation period may be affected. This applies to all civil and family proceedings in BC Provincial Court, BC Supreme Court and BC Court of Appeal.

But don't wait to file your notices of claim and notices of appeal. Do it now.

Take a moment to learn how your mandatory program is performing after 50 years in LIF's new digital annual report and the *Indemnity Issues: Program Report*.

GUIDELINES FOR CALCULATING BC LIMITATION PERIODS

First determine that BC law applies to the claim.*

Limitation period scenarios for BC claims	Effect of suspension of limitation periods	Example
If the limitation period expired before the suspension.	No effect. The limitation remains expired.	• A motor vehicle accident occurred on February 26, 2018. • The limitation period would normally expire on February 26, 2020. • The limitation period expired on February 26, 2020 if no action was commenced as the suspension of limitation periods has no application.
If the limitation period would normally have expired between March 26, 2020 and March 25, 2021.	Add 1 year to the expiry year of the limitation period. (You have the same amount of time remaining after the suspension of limitation periods as you did before.)	• A motor vehicle accident occurred on April 27, 2018. • The limitation period would normally expire on April 27, 2020 but for the suspension. • The limitation period now expires on April 27, 2021.**
If the cause of action arose before March 26, 2020 and would normally expire after March 26, 2021.	Add 1 year to the expiry year of the limitation period. (You have the same amount of time remaining after the suspension of limitation periods as you did before.)	• A motor vehicle accident occurred on June 1, 2019. • The limitation period would normally expire on June 1, 2021 but for the suspension of the limitation period. • The limitation period now expires on June 1, 2022.
If the cause of action arose after the suspension of limitation periods but before March 25, 2021.	The limitation period expires March 26, 2023. (A limitation period that began to run during the suspension starts to run when the suspension is lifted.)	• A motor vehicle accident occurred on October 28, 2020. • The limitation period would normally expire on October 28, 2022. • The limitation period now starts to run on March 26, 2021. (The suspension was lifted at the end of the day on March 25, 2021.)*** • The limitation period therefore expires on March 26, 2023.****

Note: At the time of this notice, the discretionary power provided to entities that have statutory power to waive, suspend or extend a limitation period will continue until 90 days after the state of emergency is lifted (see sections 1 and 3 of Item 7 of Schedule 2 to the *COVID-19 Related Measures Act*). That discretionary power is not intended to extend to courts.

* For example, in a contract claim, BC law, including BC limitation law, will not apply automatically simply because a party commences an action here. The parties may have contractually agreed to another jurisdiction's law applying to the contract. In another example, under conflict of laws principles, a court may conclude that the claim is more clearly connected to a jurisdiction other than BC, and that the other jurisdiction's law applies to the claim.

** For greater clarity, April 27, 2021 is the last day to file the notice of civil claim.

*** Please see s. 4(3) of the *Interpretation Act*.

**** March 26, 2023 is a Sunday. Please refer to the *Interpretation Act* to determine what impact, if any, this has on the expiry of the limitation period.

This document was developed by the Lawyers Indemnity Fund of the Law Society of BC, in consultation with the BC Ministry of Attorney General, and is shared as educational material. It is not intended to constitute legal advice and should not be relied upon for those purposes. The Ministry of Attorney General confirms that the examples provided above are consistent with the policy intent for how the suspension of limitation periods relating to the COVID-19 pandemic was meant to function.

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.

DISCLOSING JURICERT PASSWORD

A compliance audit revealed that a lawyer disclosed his Juricert password to his legal assistant, contrary to his Juricert Agreement, Law Society Rule 3-64.1 (then Rule 3-96.1) and rule 6.1-5 of the *Code of Professional Conduct for British Columbia*. The lawyer stated that he did not know his Juricert password, but his legal assistant did. The lawyer clarified that although his legal assistant entered his password, he applied his own digital signature to the documents to be filed with the electronic filing system and was present when the documents were registered. The lawyers has since changed his Juricert password and has not disclosed it to anyone. (CR 2021-01)

Another lawyer also disclosed his Juricert password to his legal assistant and permitted her to affix his digital signature on documents for e-filing with the Land Title Office, contrary to his Juricert Agreement, Part 10.1 of the *Land Title Act*, Law Society Rule 3-64.1 (then Rule 3-96.1) and rule 6.1-5 of the *BC Code*. The lawyer's explanation was that he completed very few land transfers over the past few years, and he had his assistant prepare the documents and then she affixed his digital signature. The lawyer has changed his Juricert password and is now the only person who knows the password and applies his digital signature. (CR 2021-02)

JURICERT, NO CASH RULE

A lawyer improperly disclosed his Juricert password to his assistant, signed a trust cheque with the amount field blank, and accepted $18,000 cash in relation to an estate matter. A portion of the cash was disbursed to pay estate expenses. The lawyer acknowledged that he had failed to comply with his Juricert Agreement, Part 10.1 of the *Land Title Act*, Law Society Rule 3-64.1 (then Rule 3-96.1) and rule 6.1-5 of the *BC Code* when he disclosed his Juricert password to his assistant. He has since obtained a new Juricert password, which he has not disclosed, and confirmed that he affixes his digital signature to instruments for registration in the Land Title Office. With regard to his signing a trust cheque with the amount field left blank, in breach of his obligation under rule 3.5-2 of the *BC Code*, the lawyer acknowledged his mistake. He had also received $18,000 in cash in an estate matter and disbursed a portion of the cash to pay estate expenses, contrary to Rule 3-59(6). The lawyer accepted his responsibility and has informed his staff of the cash limits under the Rules. (CR 2021-03)

NO CASH RULE

While acting in a family matter, a lawyer accepted a total amount of $12,000 in cash from a client for a retainer and then refunded $5,786.85 to the client by way of a trust cheque instead of cash, in breach of Law Society Rule 3-59(5). The lawyer explained that he had accepted the $12,000 cash for the matter to proceed to trial, and, when the client abandoned the claim, he billed the file and inadvertently refunded the balance of $5,786.85 by way of a trust cheque, instead of cash. The refund had been prepared by the lawyer's legal assistant, and another lawyer, who is a co-signatory to the firm's trust account, had signed the refund trust cheque. The lawyer readily acknowledged the breach and immediately established further office procedures, including no longer accepting cash retainers greater than $1,000. (CR 2021-04)

TRUST ACCOUNTING OBLIGATIONS

A compliance audit revealed a total of $46.34 was transferred from six individual client ledgers to a firm's trust float ledger, contrary to Law Society Rules 3-54 and 3-64(1). The firm was not entitled to the funds; the purpose of the transfers was so the client files could be closed. The lawyer responsible for the files relied on his bookkeeper to abide by the trust accounting rules and was not aware this practice was not appropriate. He stated he understood the principle underlying the trust accounting rules that "it is not acceptable to scoop" from clients, even though these were relatively small amounts. The lawyer transferred the funds back into trust, wrote cheques and letters to each client and apologized to them. (CR 2021-05)

A lawyer authorized the withdrawal of residual trust balances in 10 conveyancing matters totalling $446.75, purportedly as payment of additional fees or disbursements when none were owed by the clients, contrary to Law Society Rules 3-64(1) and 3-65, section 69(1) of the *Legal Profession Act,* and rules 3.5-6 and 6.1-1 of the *BC Code*. These transfers were the result of a firm policy related to residual trust funds that was non-compliant with the Rules, Act and *BC Code* and in part the consequence of inadequate supervision by the lawyer of delegated tasks. The amounts withdrawn on each file ranged from $26 to $75. The firm has amended its policy and now returns all residual balances to clients, even where small disbursements could be billed. The lawyer stated that he would take all necessary steps to ensure that he has satisfied himself that funds are due and owing and a bill has been prepared and immediately delivered to the client before any trust transfer. He will also directly supervise staff on delegated tasks and functions. (CR 2021-06)

CLIENT ID AND VERIFICATION

In similar but separate instances, conduct review subcommittees met with lawyers who had acted for clients in non-face-to-face transactions where they failed to confirm their clients' identities under the client identification and verification rules (Law Society Rules 3-98 to 3-110).

A lawyer was retained to represent a client in the purchase of a residential property. A realtor had referred the client to the lawyer. The client was a Canadian citizen but resided outside Canada at the time of the transaction. The client sent copies of his Canadian passport and social insurance number card electronically to the lawyer; however, the lawyer did not contract with an agent to verify the client's identity outside of Canada. Following the audit, the lawyer obtained a signed agent and indemnification agreement for the client. The lawyer has put new systems in place at her firm to ensure that the client verification rules are adhered to. (CR 2021-07)

A lawyer represented clients in a loan transaction, referred to him by a mortgage broker with whom he had previous dealings. The lawyer spoke with the clients by telephone and, after carrying out some searches, provided his trust account information to his clients. The lawyer received copies of the clients' driver's licences by text. The lawyer acknowledged his omission and stated that he simply missed the requirement to obtain an attestation from a commissioner of oaths in Canada or a guarantor, and that he had seen one document required in Rule 102(2)(a). The lawyer acknowledged his mistake and has taken the online client and verification course. (CR 2021-08)

In two real estate transactions and one business purchase completed as a non-face-to-face transaction, a lawyer failed to comply with the client identification and verification requirements. In the first real estate transaction, the lawyer did not properly verify the purchaser client's identity, but instead relied on her realtor's FINTRAC identification and verification documents and her lending officer's confirmation of identity. In the second transaction, the lawyer again relied on the realtor's FINTRAC identification and verification documents, as well as the lawyer's previous in-person interactions with the client. In the business purchase, the client, then an Alberta resident, emailed a copy of his identification to the lawyer, but the lawyer did not obtain an attestation from a commissioner of oaths verifying the client's identity. The lawyer and the client met in person after the transaction completed. The lawyer acknowledged responsibility for the three omissions and now uses the client identification and verification forms for non-face-to-face transactions involving clients from Canada or elsewhere. (CR 2021-09)

In acting for a client who resided in Alberta, a lawyer did not verify the client's identity by obtaining an attestation from a commissioner of oaths or a guarantor in Canada. The lawyer had only requested and received a scanned copy of the client's driver's licence for his file. He did not obtain and record the client's occupation and business contact information, and he had no information to suggest the lawyer from Alberta who had referred the client to him had verified the client's identity. The lawyer admitted that he was deficient in his knowledge of the client identification and verification rules and has since reviewed the materials on the Law Society's website. (CR 2021-10)

A lawyer represented a client in a wrongful/constructive dismissal action against her former employer. The client resided in Yukon, and the lawyer did not know the client before he was retained, and he failed to verify the client's identity. When the client's claim settled, the lawyer received settlement funds from the former employer, deposited those funds into his trust account and then sent settlement funds to the client. After learning he was in breach of the Rules, the lawyer took the online client identification and verification course and incorporated the client identification and verification checklist into his practice. He has also secured an agent in Yukon, where most of his non-face-to-face clients reside. (CR 2021-11)

BREACH OF CONFIDENTIALITY

While acting in a family law matter, a lawyer breached the confidentiality of a potential client, contrary to rule 3.3-1 of the *BC Code* and its commentary. Two years after the potential client contacted the lawyer with an unsolicited email, the lawyer inadvertently disclosed that email containing confidential information to her ex-husband at his request. The ex-husband then attached the email to an affidavit filed in the family law proceeding. To prevent an inadvertent reoccurrence, the lawyer adopted an office policy to print and review unsolicited emails. She and her staff review the emails monthly so names of potential clients and parties are familiar to everyone. (CR 2021-12)

UNSATISFIED MONETARY JUDGMENT

A compliance audit revealed a lawyer failed to notify the executive director of an unsatisfied monetary judgment registered against her by the Canada Revenue Agency, contrary to Law Society Rule 3-50. The lawyer admitted that she should have reported the judgment. She could satisfy the tax certificate but was seeking an accounting adjustment for prior years' overpayment. The lawyer has satisfied the monetary judgment and has instituted weekly reminders to ensure any future judgments or tax certificates are reported according to the required timelines. (CR 2021-13)

DISHONOURABLE CONDUCT

A lawyer altered a cheque payable to both a bank and himself by improperly removing the name of the bank on the cheque such that the cheque became payable only to him, and he deposited the cheque into his personal account, contrary to rule 2.2-1 of the *BC Code*. The lawyer had invested capital in the law firm to become an equity partner. To do so, he took out a loan with the bank to finance the capital. When the lawyer resigned as a partner, his capital was paid back to him in installments. The lawyer was remorseful for his conduct and acknowledged the serious lapse of judgment that occurred, citing stressful personal and financial circumstances. The lawyer settled the debt owing the bank and apologized to his former law firm. He understands the financial and emotional circumstances that led him to this misconduct and assured the conduct review subcommittee this conduct will never be repeated. (CR 2021-14)❖

Discipline digest

BELOW ARE SUMMARIES with respect to:

- Donald Franklin Gurney
- Brock Anthony Edwards
- Milan Matt Uzelac
- Suneil Kyle Sangha
- John Murray Lott
- Sandra Helen Mary Smaill, QC
- Kenseelan Gounden

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

DONALD FRANKLIN GURNEY

Called to the bar: May 15, 1968

Retired membership: January 1, 2018

Review date: October 14, 2020

Review board: Jamie Maclaren, QC (chair), Catherine Chow, Lindsay R. LeBlanc, Paul Ruffell and Heidi Zetzsche

Decision issued: November 19, 2020 (2020 LSBC 56)

Counsel: J. Kenneth McEwan, QC and Kyle Thompson for the Law Society; Donald Franklin Gurney appearing on his own behalf

APPLICATION FOR AN EXTENSION OF TIME TO INITIATE A REVIEW

The Law Society applied for an extension of time to initiate a review of an order made by a hearing panel in 2017 to seal certain materials so they were not publicly available. The Law Society submitted that it was in the interests of justice in that the review will maintain the values of openness and transparency, build confidence in the disciplinary process, be successful and not prejudice any party. Donald Franklin Gurney submitted that the application be adjourned so the Law Society could give him the particulars of the order it wished to propose.

The president granted the application to extend the time to initiate a review of the order. He noted an application to extend the time for a review after three and a half years is extraordinary, and it would not have been granted other than in a situation where the issue is of great significance and where there is an absence of prejudice. Given the delay to date, the president stated the matter must be resolved expeditiously and ordered time frames for proceeding with the review (2020 LSBC 35).

DECISION OF THE REVIEW BOARD

The review board considered a previous similar case where the panel determined that there may be legitimate reasons to restrict public access to exhibits filed at a hearing, such as protecting solicitor-client privilege and confidentiality. The Law Society and Gurney developed a consent order, which the review board adopted.

The review board ordered that:

1. section 1 of the hearing panel order of January 20, 2017 be set aside;
2. client names, identifying information and any other confidential or privileged information contained in the interim exhibits be redacted as in the redacted exhibits;
3. client names, identifying information and any other confidential privileged information contained in the transcripts to these proceedings be redacted; and
4. if any person other than a party seeks to obtain copies of any exhibits or transcripts to these proceedings, the redacted exhibits and transcripts to these proceedings shall be disclosed to that person.

BROCK ANTHONY EDWARDS

Burnaby, BC

Called to the bar: September 1, 2004

Hearing dates: January 24, March 10 and September 29, 2020

Panel: Craig Ferris, QC (chair), Laura Nashman and John Waddell, QC

Decisions issued: May 25 (2020 LSBC 21) and November 26, 2020 (2020 LSBC 57)

Counsel: Mandana Namazi for the Law Society; Joel Morris for Brock Anthony Edwards

PRELIMINARY APPLICATIONS

Brock Anthony Edwards applied for an adjournment of a hearing on the day of the scheduled hearing on the grounds that his former lawyer formally withdrew from the record at a prehearing conference the week prior, that Edwards intended to apply to withdraw some or all of the admissions, and that he had retained new counsel who needed time to prepare for the hearing.

A notice to admit had been served on Edwards' lawyer in September 2019. It stated that, if he did not respond within the requisite 21 days, Edwards would be deemed to admit the truth of the facts. Edwards never responded to the notice. In November 2019, his lawyer requested to adjourn the December hearing. A third prehearing conference took place, and Edwards' lawyer indicated he accepted the notice to admit and would not contest its contents. A new hearing date was scheduled for January 24, 2020.

Edwards' lawyer gave notice to withdraw on January 9, 2020. A fourth prehearing conference was held on January 17, where the presiding Bencher permitted Edwards' lawyer to withdraw. Edwards advised for the first time he would not make any admissions.

Edwards' new counsel contacted the Law Society on January 19 and advised he was retained to apply to adjourn the hearing. He appeared

at the January 24 hearing and reiterated that he required an adjournment to allow time to review the matter, take instructions and prepare for the hearing.

The Law Society submitted that Edwards was aware of the withdrawal of his counsel and yet made no efforts to find new counsel, and he had ample opportunity to object to the contents of the notice to admit. An adjournment, in the Law Society's view, would be contrary to the public interest.

The hearing panel dismissed the adjournment application and ordered the Law Society to present its evidence as scheduled on January 24, 2020, but without closing its case. The hearing would then be adjourned to allow Edwards and his counsel to prepare an application to withdraw some or all of the facts in the notice to admit. The Law Society presented its evidence and made submissions. The hearing then adjourned to March 10, 2020.

Edwards applied to withdraw certain admissions in the notice to admit that were, in his view, irrelevant to the allegations in the citation and prejudicial to him. He asserted he never had an opportunity to review the admissions in the notice with previous counsel and challenged the evidence of his former spouse and her counsel. He said he ought to be permitted to lead fresh evidence.

The Law Society opposed the application, as the Supreme Court decision that is the subject of the citation is admissible as proof and Edwards should not re-litigate those findings. It remained open to Edwards to make submissions to argue that certain admissions should not be given weight. The Law Society submitted Edwards had not established a proper basis to withdraw the admissions.

The panel dismissed Edwards' application to withdraw the specified admissions.

FACTS

Edwards is a sole practitioner whose practice consists primarily of motor vehicle plaintiff and criminal law. He and his former wife were parties in a family law trial in the Supreme Court of BC. The court pronounced a final order granting a divorce, which included orders on guardianship, parenting time, child support and property division.

In her reasons, the judge noted that Edwards' conduct through the litigation had been unacceptable, including failure to produce documents, ignoring an order of the court to pay child support and a lack of cooperation concerning the property involved, which had the effect of driving up costs for his former spouse, the opposing party.

Edwards later applied to change the parenting arrangements and for a reduction in child support. He wrote to the opposing party asking her to provide a list of three mediators by a certain time and stating that, if she failed to do so, he would consider filing a claim against her new partner for assaulting his child. He sent instructions to his legal assistant to file a requisition with respect to his application and copied a senior lawyer. It was unclear why the senior lawyer was copied, as he was not involved in the case. That lawyer advised him he should not file the requisition to change the date "by consent," as the opposing party had not been notified and had not consented. Edwards proceeded to file the requisition, which stated the change of date was "by consent."

The opposing party's lawyer sent Edwards a letter stating that the requisition filed indicated consent, but that was not the case, and she would inform the court accordingly. The opposing lawyer filed a response to the application, which included an affidavit setting out a history of events leading up to the final order and explained that Edwards' failure to pay child support led the opposing party to enrol with the Family Maintenance Enforcement Program (FMEP).

The court made several interim orders:

- Edwards' application to vary the final order regarding custody was adjourned;
- should Edwards wish to re-set an application to vary custody, he must do so in compliance with the Supreme Court's family rules;
- the opposing lawyer may calculate Edwards' child support arrears to determine his new amount of child support arrears;
- the opposing party was awarded costs of $500 because Edwards filed a requisition "by consent" when she had no knowledge of the requisition; and
- Edwards was required to pay the $500 costs as a precondition to setting down any further court applications.

Edwards emailed the opposing lawyer and requested she send the draft order to the senior lawyer who was not involved in the case, before filing it at the courthouse. Edwards also sent several emails to her to set out arrears he calculated he owed. He forwarded an email to her from the registrar, which attached the court summary sheet confirming the opposing party had been awarded costs of $500. The next day he paid $500 to FMEP, then he emailed the opposing lawyer and claimed he had paid the costs order.

The opposing lawyer refused to send the order to an uninvolved third party for review. She said costs were payable to her client and were not child support, and the $500 paid to FMEP was irrelevant to the issue of costs. She said the order directed her to calculate arrears, not Edwards.

Edwards responded that it was "nonsense" and "bad faith" and he would consider bringing an application before the court to ask for special costs. He claimed it would take another full day to argue about the costs, which would be charged back to the opposing party.

Edwards served the opposing lawyer with a notice of application, which sought to vary parenting arrangements. He made a written request to the court seeking an order that his payment to FMEP satisfied payment of the cost award.

The opposing party filed a response to the application with an affidavit that set out her belief Edwards deliberately paid the $500 costs

award to FMEP instead of to her because he wished to reduce his child support arrears while fulfilling his obligation to pay the award before he could bring further applications. She alleged Edwards breached the order by not filing and serving applications in accordance with family rules and by calculating the arrears he owed. The response also alleged Edwards insulted her lawyer, screamed at her in open court and emailed her to claim she was acting in "bad faith."

Edwards sent a cheque for $500 to the opposing lawyer and stated the payment was sent on the undertaking that she not make use of it unless with respect to the order. The lawyer refused to agree to the undertaking, as the money represented the costs award and therefore was not the subject of an undertaking. Edwards removed the undertaking, and they exchanged a number of emails to set the next court date.

The opposing lawyer filed an application pursuant to section 221 of the *Family Law Act*, which allows a court to make an order prohibiting a party from making further applications or continuing a proceeding without leave of the court. Edwards has admitted to the facts in that application, including that he brought civil proceedings against his former spouse's new partner to force her to engage in negotiations to vary the child support arrears, and his behaviour in litigation resulted in additional expense and frustration for her.

Edwards filed another requisition that requested the hearing be re-set to another date by consent. The opposing party and her lawyer had not provided any such consent.

Edwards filed an affidavit attaching one email from himself to the opposing lawyer on his available dates for a hearing, despite having received other emails from her on setting the application. He implied the lawyer deliberately filed a separate application in order to supersede his application to vary custody or parenting time.

At the hearings, Edwards accused the opposing lawyer of abusing the court process and being contemptuous of the court order. The lawyer clarified to the court that her contact with Edwards was about her s. 221 application, and she did not think he expected her to set down his separate application.

The judge determined, based on findings of fact, that Edwards had misused the court process. He found that Edwards did not obtain consent for the two requisitions filed and there was no substance to his statements about setting the dates. His $500 payment to FMEP was to "skirt" the terms of the order, and his request for an undertaking with respect to the costs was unnecessary. Edwards wrote an email suggesting he hoped to cause his former spouse more expenses in legal fees. He used the court process to harass and intimidate her — he emailed her demanding mediation and threatening to sue her new partner to force her to negotiate a reduction in his arears.

The court ordered that Edwards was prohibited from making further applications or continuing with any proceeding for four years without leave of the court and awarded special costs against him.

ADMISSIONS AND DETERMINATION

Edwards admitted to the court's findings; however, he submitted that the senior lawyer who was not involved in the matter had sent an email to the opposing lawyer stating that the $500 represented costs and should not be applied to the arrears, and that is evidence that he did not intend to frustrate or misuse the court process by making a payment to FMEP. The hearing panel found this amounted to "damage control" and that his original intent was not remediated by the senior lawyer's email.

Edwards also submitted his conduct as a self-represented litigant in his own family law proceedings constituted conduct unbecoming, not professional misconduct. He referenced the distinction made in a previous hearing decision, in which conduct unbecoming referred to conduct in the lawyer's private life, while professional misconduct referred to conduct occurring in the course of a lawyer's practice.

The panel considered other cases in which lawyers were self-represented, especially when a lawyer's actions were directly related to their practice as a lawyer. It found that Edwards used his skills and experience as counsel to advance his personal interests. The panel found Edwards' conduct amounted to a marked departure from the conduct that the Law Society expects of lawyers and is professional misconduct.

DISCIPLINARY ACTION

The hearing panel considered the very serious nature of Edwards' misconduct in frustrating or misusing the court process on five separate occasions, as well as the consequences to his former spouse, his former spouse's partner, their children, opposing counsel, the court process and the legal profession. The panel considered his 12 years of experience practising law to be an aggravating factor, as he would not have been able to pursue the course of action he did had he not been a lawyer with significant court experience. The panel did not find evidence of any remedial action.

The panel ordered that Edwards:

1. be suspended for two months; and
2. pay costs of $14,058.71.

MILAN MATT UZELAC

Vancouver, BC

Called to the bar: June 26, 1975

Written materials: September 30, 2020

Decision issued: December 3, 2020 (2020 LSBC 58)

Hearing panel: Jennifer Chow, QC (chair), Darlene Hammell and Sandra E. Weafer

Counsel: Kathleen Bradley for the Law Society; Milan Matt Uzelac appearing on his own behalf

FACTS

Milan Matt Uzelac practises law full-time through a personal law corporation. He has a general practice including the areas of corporate/commercial, family, criminal, residential real estate, administrative, civil litigation, commercial lending transactions, motor vehicle and wills and estates law.

A detective from the Vancouver Police Department contacted the Law Society regarding Uzelac's trust account, advising that an individual reported that she deposited funds into his trust account as part of an investment scheme. The Law Society ordered an investigation into the books, records and accounts of Uzelac and his firm.

The individual was approached by a client of Uzelac about a Barbados bank that was offering 6 per cent interest for funds deposited with the bank. The individual provided more than $1 million in the form of bank drafts made payable to Uzelac in trust, which she understood would then be transferred to the Barbados bank.

She told her accountant about the investments, and the accountant became suspicious. The accountant contacted the Barbados bank, and the bank confirmed no portfolio was being held for the individual. She retained counsel, initiated a civil suit against Uzelac's client and reported the fraud to police. Uzelac never had any direct contact with the individual or any knowledge of her circumstances or any of her dealings with his client. Uzelac's client settled the civil suit with the complainant.

Uzelac never had any retainer agreements with his client. He did not make specific inquiries about the source of deposits he received from the client. He explained that his understanding was that the source of the funds was from any one or more of his investments or from his client's own bank account. However, his client frequently asked for cheques to be made payable to him at the same time he confirmed the arrival of a new deposit. His client also explained some bank drafts were settlement funds from his employment with Corporate House, the Canadian representative of the Panama Papers scandal. This should have been a red flag that spurred further enquiries. Uzelac admitted that the structure of his client's settlement payments were inconsistent with commercial norms for a settlement with a former employee.

Uzelac admitted he did not know how much money he was to receive from his client before he received it, nor did he know how his client intended to use the funds he received and disbursed. He said the payments did not raise any concerns for him. Uzelac has a long-term relationship with the client and has known his family for decades.

DETERMINATION

Uzelac admitted that he received and disbursed up to $1,167,000 through his trust account on behalf of a client without making reasonable inquiries about the circumstances and without providing substantial legal services in relation to those funds. As a result, his client was able to dupe the individual into investing funds in a fraudulent investment scheme.

The panel accepted Uzelac's admission of professional misconduct.

DISCIPLINARY ACTION

The panel considered whether the disciplinary action proposed by the Law Society and Uzelac was fair and reasonable given the nature, gravity and consequences of the misconduct, his acknowledgement of the misconduct and his previous professional conduct record, which included accounting and trust restrictions, breaching accounting rules and practice conditions and failing to provide the quality of service expected of a competent lawyer.

The panel accepted the proposed disciplinary action and ordered that Uzelac:

1. be suspended for four months; and
2. pay costs of $1,000.

SUNEIL KYLE SANGHA

Surrey, BC

Called to the bar: October 1, 2015

Written materials: October 1, 2019 and November 2, 2020

Panel: Lisa Hamilton, QC (chair), Darlene Hammell and Shona Moore, QC

Decisions issued: January 30, 2020 (2020 LSBC 03) and January 26, 2021 (2021 LSBC 03)

Counsel: Deborah K. Lovett, QC, for the Law Society; Michael D. Shirreff for Suneil Kyle Sangha

FACTS

Suneil Kyle Sangha represented two clients as purchasers in a real estate transaction. He understood that a numbered company would be the registered purchaser and mortgagor. The vendors executed a Form A Transfer, transferring the property to the numbered company. Sangha's clients executed a Form B Mortgage, and under the signature portion of that form, the numbered company was manually crossed out and replaced by the names of Sangha's two clients as the borrowers. When the transaction closed, Sangha electronically filed the Form B Mortgage and a copy of the executed Form A Transfer.

When Sangha realized that his two clients ought to have been named on both forms, he tried to amend the registrations by way of a statutory declaration. The Land Title Office did not permit the attempted amendment and advised Sangha to withdraw the two forms, re-execute them, and resubmit the amended re-executed forms. After withdrawing the original forms, Sangha refiled them without having either form re-executed. He did not obtain the consent of the vendors before filing the amended Form A Transfer, and he did not advise them of the changes. He did not advise one of his clients of the amendments to and refiling of the forms, nor did he have in his possession a true copy of either form matching the copies he filed with the Land Title Office.

In another real estate transaction, Sangha represented two clients as the purchasers. The Form A Transfer was executed by the vendor and named Sangha's clients as joint tenants but incorrectly stated one client's first name. The Form B Mortgage was executed by the clients. Sangha electronically filed a Form A Transfer that corrected the client's first name but omitted the reference to the clients as joint tenants. He did not advise the vendor about the changes and did not obtain the vendor's consent before filing the amended form. The Form B Mortgage that was filed by Sangha differed from the executed version and did not list his clients as joint tenants. Sangha did not have a true copy of an executed Form B Mortgage that matched the form he filed with the Land Title Office.

In a third real estate transaction, Sangha represented four clients as purchasers. The vendors entered into a contract of purchase and sale with one of the clients, naming that client as the purchaser. The day after the transaction closed, Sangha filed a Form A Transfer listing all four clients as owners. The vendors had not re-executed the form to permit the additional three owners. Sangha did not have a true copy of an executed Form A Transfer that matched the copy he filed with the Land Title Office.

In a fourth real estate transaction, Sangha represented a client as purchaser. A contract of sale was entered into between the vendors and a numbered company. The vendors executed a Form A Transfer transferring the property to a different numbered company.

Sangha advised the vendors' lawyer that he had been informed that his client, a director of the second numbered company, would be completing the transaction in his personal name and his mother's name. The vendors' lawyer consented to the change and asked to be provided with a signed assignment of the contract of purchase and sale from the company to Sangha's client and his client's mother.

A contract addendum was signed on behalf of the first numbered company agreeing that the buyer reserved the right to register the property in the names of Sangha's client and that of the client's mother. The client and his mother executed a Form B Mortgage. Sangha electronically filed a Form A Transfer naming only his client as purchaser. When he filed, Sangha did not have a true copy of an executed Form A Transfer that matched the copy he filed with the Land Title Office.

DETERMINATION

The hearing panel found that Sangha had committed professional misconduct with respect to each of the four transactions.

DISCIPLINARY ACTION

The panel considered the serious nature of Sangha's conduct, particularly how it spanned over the course of one year involving four separate files. The panel stated that, while none of the sellers or purchasers were harmed in this case, public confidence in lawyers is negatively affected by conduct of this nature.

The panel also considered that Sangha was a newly called lawyer at the time of the conduct who had not had the benefit of experience or mentorship. He had a conduct review about similar conduct and a supervision agreement made with the Practice Standards Committee. The panel noted that Sangha had acknowledged his mistakes and taken steps to improve his practice.

The panel dismissed an order sought by the Law Society that Sangha be prohibited from engaging with files involving the purchase, sale or financing of real estate, because he is already subject to a similar order from the Practice Standards Committee.

The panel ordered Sangha to pay:

1. a fine of $7,500, and
2. $3,500 in costs.

JOHN MURRAY LOTT

Delta, BC

Called to the bar: May 12, 1981

Written materials: November 18, 2020

Decision issued: February 1, 2021 (2021 LSBC 04)

Hearing panel: Michael F. Welsh, QC (chair), Andrew Mayes and Robert Smith

Counsel: Ilana Teicher for the Law Society; Lakhvinder Uppal for John Murray Lott

FACTS

John Murray Lott practises as a senior lawyer at a law firm in Delta, primarily in wills and estates, with some real estate, corporate, motor vehicle and civil litigation. He was initially retained by his client's daughter to open a file for her elderly mother with complex medical issues. The elderly mother had executed her last will and testament five years prior. Lott prepared a codicil and representation agreement for her on her daughter's instruction. He did not meet with the elderly mother and made no assessment of her capabilities.

The client's daughter approached Lott to seek compensation for care services she provided to her mother. The daughter presented a blank cheque and a letter stating the mother's intentions of gifting the money to her daughter for her care and that the gift was not part of her inheritance. Both the cheque and letter were signed by her mother. Lott concluded the client may have declining capacity from alcohol abuse, based on information given by her daughter. Lott did not contact the client to discuss the issue of compensation for the daughter, to obtain instructions or to assess the client's capacity.

A cheque in the amount of $100,000 payable to the daughter cleared the client's account. The client said she only became aware of the gift when her financial advisor called her. Lott went to the client's home with her daughter, and the client said the daughter "took" her money. Lott advocated on the daughter's behalf and justified the money being taken.

The client went to the bank to terminate the daughter's power of attorney. The daughter emailed Lott about the client's health and access to her accounts by her grandson. Lott did not contact the client to verify the facts in her daughter's email, did not assess the client's capability to terminate the power of attorney and did not obtain her instructions to reinstate the power of attorney to her daughter.

Lott met with the bank manager and drafted a new power of attorney for the daughter. The client said she was never contacted for instructions on a new power of attorney and she did not want her daughter to have her power of attorney. She denied abuse by her grandson.

Lott issued invoices to the client for the services he provided to the client's daughter regarding compensation for care services. His invoice did not reference any communications between the client and himself. The client emailed Lott and asked who the "clients" were in addition to her and requested paper copies of all correspondence related to the legal services for which she was being billed. Lott did not provide the client with any details of his statements of account or copies of supporting documents and correspondence.

The client's other daughter contacted another lawyer and explained to him her concerns about the money taken from her mother's account by her sister and Lott's allegations of elder abuse by the client's grandson. The lawyer met with the client and was of the view she was lucid and not under anyone's influence. The client said she no longer wanted Lott to be her lawyer. The new lawyer wrote and the client signed a note terminating Lott as her lawyer.

The lawyer requested from Lott the client's original will and powers of attorney and full details of Lott's invoice with supporting documentation, saying the client would not pay until she received this documentation. Lott forwarded the new lawyer's correspondence to the client's daughters and told them there was no reason for their mother to terminate her relationship with him.

Lott did not withdraw from representation of the client after she discharged him and retained new counsel. He continued to act in concert with the client's daughters.

Lott accepted an invitation from the client's daughter to visit the client. During the visit, Lott advocated on behalf of the client's daughter, saying that her charges for care services were reasonable. The client said she felt mad and intimidated with Lott in her home. The new lawyer said Lott never contacted him and never told him he planned to go to the client's home. After the meeting, Lott emailed both daughters to say the client was free to dismiss him, but he believed she was confused or influenced when she retained another lawyer.

The daughter who initially retained Lott decided to retain her own lawyer and asked Lott to provide her new lawyer with information and an update on the status of her power of attorney. She also said she was seeking sole committeeship through her new lawyer, which Lott recommended she proceed with. Lott confirmed he would end his involvement at that point unless and until he received support from the other daughter.

DETERMINATION

The panel found that Lott advocated for the client's daughter when her interests were in conflict with those of his client, failed to provide quality service to the client and breached his fiduciary duty to the client, disregarded the client's newly retained counsel and met with the client without that lawyer's consent, ignored the client's instructions and wishes to discharge him but instead worked with the daughters to remain as her lawyer, and ignored the new lawyer's requests for documentation. The panel determined his conduct constituted professional misconduct and accepted his admission that he had committed professional misconduct.

DISCIPLINARY ACTION

The panel considered the gravity of Lott's misconduct, his extensive four decades of experience, his willingness to admit his misconduct and proposed disciplinary action, his professional conduct record of two conduct reviews with similar misconduct, and the range of disciplinary actions in similar cases.

The panel accepted the proposed disciplinary action that had been consented to by Lott and approved by the Discipline Committee and ordered Lott to pay:

1. a fine of $20,000; and
2. costs of $1,000.

SANDRA HELEN MARY SMAILL, QC

Kimberley, BC
Called to the bar: January 14, 1979
Suspended: March 21, 2018
Custodian appointed: April 30, 2018
Ceased membership for non-payment of fees: January 1, 2019
Hearing dates: December 11, 2019 and December 18, 2020
Panel: Michael F. Welsh, QC (chair), Thelma Siglos and Sandra E. Weafer
Decisions issued: March 3, 2020 (2020 LSBC 14) and February 4, 2021 (2021 LSBC 06)
Counsel: Michael D. Shirreff for the Law Society; Sandra Helen Mary Smaill, QC appearing on her own behalf (disciplinary action only)

FACTS

At the time of the facts in this matter, Sandra Helen Mary Smaill, QC was a sole practitioner in a non-computerized office. During the course of a compliance audit, it was found that she had no central filing system in the firm to store or retain client accounts. Her books and records were in a state of disarray, and forensic accountants took months to try to recreate the trust ledgers and postings.

Accounting records, banking records, client files and billing records were not properly maintained or filed. She did not keep current trust ledgers and did not keep a book of entry to record trust transactions

received and disbursed by the firm. Her monthly reconciliations were not signed and the preparation dates were not recorded, and they contained multiple errors and were not completed in a format consistent with Law Society accounting rules. She did not maintain proper general account records and did not always record the funds received and disbursed in connection with her law practice. She did not keep records of bills for fees and disbursements she incurred, copies of bills or a master file of all bills delivered.

Over the course of three and a half months, Smaill misappropriated or improperly withdrew trust funds by withdrawing residual balances in inactive or concluded client files on 22 occasions. Some of the withdrawals were supported by statements of account that referred to the work done as "file closing" or "file closure." Her explanation was that the files had been closed for a long time with minimal balances and she was unable to contact the clients. She prepared the accounts for internal records only and did not deliver the accounts to the clients.

Smaill also failed to deposit retainers into her pooled trust account for two clients. She received a total of $4,000 from the first client but deposited only $1,200. She received a retainer of $700 from the second client and deposited it into her general account, which enabled her to pay overdue invoices to the Law Society.

Smaill improperly withdrew some or all of $5,386.06 from her pooled trust account when she knew the withdrawals were not properly required for payment to or on behalf of a client. She made seven such withdrawals, in amounts between $500 and $1,525.

At the time of the compliance audit, Smaill could not confirm when she lasted filed or made GST remittances. Her statements of account showed she billed and collected GST from her clients, but the Canada Revenue Agency issued a statement of account showing $46,977.16 was owed to the federal government for GST remittances. She also failed to remit employee payroll source deductions. Documents issued by the CRA showed she owed a total of $43,509.52 in arrears, penalties and interest for payroll deductions.

Smaill failed to respond to a Law Society investigator, who left three messages and wrote her letters in July and August 2018. She finally called the Law Society in September 2018 and indicated she did not receive the voicemails. The Law Society confirmed her contact information and re-sent the documents. No further response was received from Smaill.

DETERMINATION

The hearing panel found that Smaill had committed professional misconduct with respect to each of the allegations.

DISCIPLINARY ACTION

The Law Society submitted and the panel accepted that, even though Smaill no longer practises law and is a former lawyer, protection of the public requires an order of disbarment in light of her "numerous and serious instances of misconduct, combined with her refusal to participate in the regulatory process." In particular:

- the sheer number of findings of professional misconduct;
- many involved misappropriation or mishandling of client trust funds and government remittances;
- they were compounded by the shambles in Smaill's financial record-keeping; and
- Smaill's lack of acknowledgment of the misconduct or any effort by her to remediate her clients or the CRA, or to cooperate with the Law Society investigation in any meaningful way.

The panel also considered Smaill's disciplinary record, which included two conduct reviews for breach of undertaking, failure to provide prompt service to a client, inadequate quality of service, failure to properly supervise her assistant and failure to properly respond to another lawyer to whom a client transferred from her.

While she had not participated in the facts and determination portion of this matter, Smaill did participate in the hearing on disciplinary action. She advised that she recognized that some of the matters for which she was cited, such as her failure to make government remittances, could constitute professional misconduct and, as a result, she did not dispute the citation. She said, however, that she disagreed with the other cited matters. She gave several explanations, which included problems with staff and her own difficult financial situation. Small's proposed disciplinary action was that she enter into an order that she never reapply to be a practising lawyer.

The panel stated it could not reopen its findings on facts and determination based on those submissions. It also found that the explanations given by Smaill were "woefully insufficient" to meet the specifics of the evidence, particularly documentary evidence that supported those findings. The only mitigating factor that might apply was the extreme financial hardship in which Smaill found herself; however, as noted in previous cases, misappropriation in particular cannot be excused by financial distress.

The panel concluded that public confidence in the legal profession and its integrity led to a conclusion that disbarment was the only proper disciplinary action, and ordered that Smaill:

1. be disbarred; and
2. pay costs of $10,289.04.

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, offered 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 to reimburse the claimant, on the lawyer's behalf, for the amount of the loss. In connection with the findings of misappropriation in paragraph [30] of *Law Society of BC v. Smaill*,

2020 LSBC 14, TPC claims were made against Smaill and amounts totalling $1,963.89 paid. Smaill 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, see the Lawyers Indemnity Fund website.

KENSEELAN GOUNDEN

Vancouver, BC

Called to the bar: May 17, 1992

Hearing date: October 27, 2021

Decision issued: February 16, 2021 (2021 LSBC 07)

Hearing panel: John Waddell, QC (chair), Lance Ollenberger and Chelsea Wilson

Counsel: Jordanna Cytrynbaum for the Law Society; Henry C. Wood, QC for Kenseelan Gounden

FACTS

Kenseelan Gounden was employed with Courthouse Libraries BC as chief executive officer. His offer of employment provided that "relationship building, lunches, dinner and travel" were part of his role and stated he would be reimbursed for all reasonable out-of-pocket business-related expenses.

Gounden admitted that he improperly submitted some or all of $3,524.99 of expenses to his employer over a period of nearly one year, when he knew or should have known the expenses were not incurred in the course of his employment and he was not entitled to be reimbursed for them. He admitted he altered airfare receipts, airline tickets and accommodation receipts to seek reimbursement for slightly more than the original value of the expense.

Gounden also admitted he submitted claims to his employer that contained expense claims that had previously been submitted to another organization and did not pertain to Courthouse Libraries BC. The expenses were incurred during a board retreat, and the organization had already agreed to pay for his hotel room, airfare, and any other related trip expenses. Gounden admitted he altered four receipts to increase the airfare, car rental and other travel expenses, including changing the credit card number on the receipt to make it appear he paid for the hotel using his personal credit card. He admitted he received a cheque from the organization for claims he submitted to Courthouse Libraries BC.

Courthouse Libraries discovered the misconduct and confronted Gounden. In response, he submitted a letter of resignation and self-reported to the Law Society. During the subsequent investigation, he provided a voluntary undertaking not to accept trust funds or operate a trust account and to limit his practice of law to performing legal services for the College of Psychologists of British Columbia and as an employee of a law firm in New Westminster, with all invoices for legal services and disbursements being approved in writing by the principal of that firm. Gounden reimbursed Courthouse Libraries BC in full for the expense claims he had wrongfully submitted.

Gounden submitted expert reports from medical professionals. The expert reports provided information about Gounden's personal history of multiple traumatic experiences, offered theories on why he may have committed the misconduct, and confirmed that he was motivated to continue therapy. One report included recommendations to mitigate the risk of further misconduct, which were taken into consideration in the disciplinary sanction proposed in the joint submission from the Law Society and Gounden.

Gounden also tendered letters of character reference from 12 individuals who knew him in his professional capacity. They attest to his ethics, integrity and dedication to his community and charitable causes. Gounden expressed remorse for his misconduct and apologized. He committed to continuing with therapy and to not engaging in misconduct again.

DETERMINATION

The panel determined that Gounden committed professional misconduct, as the conduct occurred in his capacity as a lawyer and as an employee of Courthouse Libraries BC and not in his private life. It also noted that the conduct occurred over the course of a year, during which he submitted 27 expense reimbursement forms seeking to be reimbursed for improper expenses, as well as five occasions where he altered receipts and documents.

DISCIPLINARY ACTION

The panel considered whether the disciplinary action proposed by the Law Society and Gounden was fair and reasonable. The panel outlined several mitigating factors that supported a suspension with conditions rather than disbarment, including his lack of discipline history, his admission of the misconduct, his experience of previous traumatic events, his steps to rehabilitate himself, his letters of reference and the restrictive practice conditions proposed.

The panel accepted the proposed disciplinary action and ordered that Gounden:

1. be suspended for 16 months;
2. pay costs of $5,326.25; and
3. be subject to additional practice conditions after his suspension:
   (a) practise in a firm setting with at least one other practitioner acceptable to the Law Society;
   (b) practise under a supervision agreement;
   (c) be prohibited from operating a trust account and from having any signing authority over a trust account;
   (d) be required to continue his psychotherapy counselling and to direct his therapist to produce an annual status report to the Law Society and notify the Law Society in the event the therapist raises concerns he may engage in similar misconduct. ❖

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