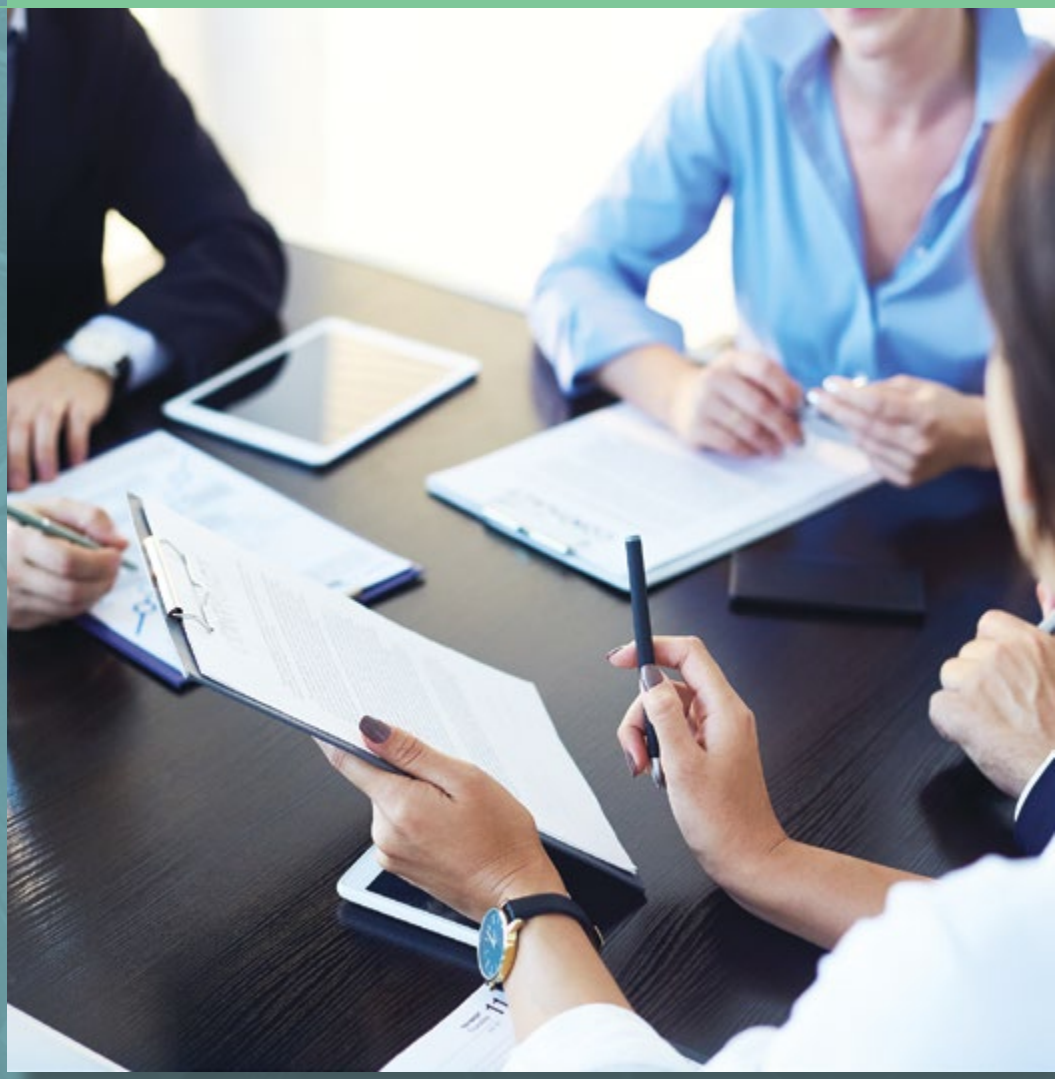
The Law Society of British Columbia

2018: No. 2 • SUMMER

BENCHERS' BULLETIN

Keeping BC lawyers informed



Addressing mental health is a priority for the legal profession

by Miriam Kresivo, QC

PRACTISING LAW CAN be stressful. As we have been learning, many lawyers face enormous pressures on their mental health. The last issue of the *Benchers' Bulletin* featured some staggering statistics on mental health in the legal profession. According to a 2016 study of nearly 13,000 American lawyers, more than a third showed signs of possible alcohol dependence and almost half of the respondents described experiencing depression. One in 10 of the lawyers surveyed reported having had suicidal thoughts at some point in their career.

While the numbers paint a grim picture, they serve as a huge wake-up call. We simply cannot ignore mental wellness. Even if you yourself are not experiencing difficulties, someone you know or care about likely needs support.

These [task force] consultations confirmed that fear of stigma causes many lawyers and law students not to disclose their difficulties and seek assistance. Others are unsure whether they could benefit from assistance, or how and where to find it.

This is why the Law Society has made addressing mental health issues a priority in the 2018-2020 Strategic Plan. In January, the Benchers struck the Mental Health Task Force to look at ways to reduce stigma and to develop an integrated mental health review on the Law Society's regulatory approaches to discipline and admissions.

To date, the task force has focused on hearing the expertise of those with firsthand experience, including Orlando Da Silva, former president of the Ontario Bar Association, Margaret Ostrowski, QC, former chair of the Mental Health Review Board, past Bencher and past president of the Canadian Bar Association, BC Branch, and representatives from the University of British Columbia Allard School of Law and the University of Victoria's Faculty of Law. These consultations confirmed that fear of stigma causes many lawyers and law students not to disclose their difficulties and seek assistance. Others are unsure whether they could benefit from assistance, or how and where to find it.

The task force has also heard from staff at the Law Society in professional conduct, practice standards and practice advice, who said they regularly come into contact with lawyers with mental health issues. They expressed an appetite for further training and resources on how best to communicate with them, to avoid further stigmatizing them and to get them the help they need, while ensuring we protect the public. We certainly will be considering their feedback as we move forward with this initiative.

The work continues. The task force will present its mid-year report to the Benchers on its activities and recommendations later this year. If you have ideas or feedback, please email mentalhealth@lsbc.org.

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

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Anita Dalakoti


Roland Krueger


Claire Marshall


Guangbin Yan


Karen Snowshoe

New Benchers

NEW PUBLIC REPRESENTATIVES

IN APRIL, THE Law Society welcomed four new appointed Benchers:

Anita Dalakoti is president of Dalakoti Financial & Insurance Services Inc., a financial services company specializing in estate, retirement and wealth planning. She is also CEO of Apple Insurance & Financial Services Inc., a general insurance agency offering property and casualty, auto, business and travel insurance. Anita served as a governor of the Law Foundation from 2010 until earlier this year.

Roland Krueger is an investment and insurance advisor with over 30 years of experience. As a board member of the Chartered Professional Accountants of BC since 2010 and a past board member of the Institute of Chartered Accountants of BC, he is familiar with how boards supervise and regulate licensed professionals.

Claire Marshall is the president of C. Marshall & Associates Inc., a consulting firm that provides services in Aboriginal relations. She has 25 years of experience in Aboriginal engagement and community development and over 15 years of experience working in the natural resources sector focusing on Aboriginal consultation, Aboriginal procurement strategies, capacity development and relationship building initiatives between Aboriginal communities and industry.

Guangbin Yan is an experienced senior project and business manager with more than 10 years of government experience during her 20-year international career in Canada, Singapore and China. She is currently working as an enterprise resource planning project manager with Langara College.

VANCOUVER BY-ELECTION

Karen Snowshoe was elected a Bencher in the May 14, 2018 by-election for Vancouver county. Born and raised in Vancouver, Snowshoe is a member of the Tetlit Gwich'in Nation in Fort McPherson, NT, and the first Indigenous woman to be elected a Bencher for the Law Society.

Since 2004, she has worked in diverse practice areas, including Indigenous issues, administrative law, arbitration and mediation. She attended UBC, completed her law degree in 2002, and was called to the bar in 2004.

Her work is currently focused on providing adjudication services across Canada. Her past clients include the Indian Residential Schools Adjudication Secretariat, the Northwest Territories Human Rights Adjudication Panel and the Northwest Territories and Nunavut Workers' Compensation Appeals Tribunal.

An experienced adjudicator, Snowshoe has held over 250 hearings across Canada and written 150 decisions and 20 appeal decisions. She is a member of two federal land claim arbitration panels and recently served as senior counsel with the National Inquiry into Missing and Murdered Indigenous Women and Girls. Snowshoe also maintains membership in numerous professional organizations dedicated to the administration of justice.

In her election statement, Snowshoe expressed her commitment to "fairness, reconciliation and healing" in advancing the Law Society's work in relation to truth and reconciliation, as well as to "increasing and promoting diversity at all levels of the legal profession."❖

Hearing panel pools

THE LAW SOCIETY Tribunal congratulates and welcomes the following new adjudicators to the public and non-Bencher lawyer hearing panel pools. The appointments are for four-year terms:

Nanette Bennett
Clarence Bolt
Eric Gottardi
John Greschner
Darlene Hammell
Denis Hori, QC
Lindsay LeBlanc
Brendan Matthews
Nina Purewal
Paul Ruffell
Shannon Salter

The following adjudicators were reappointed for further four-year terms:

Ralston Alexander, QC
Don Amos
Gavin Hume, QC
Robert Smith
John Waddell, QC

For a short bio of each hearing panel member, go to the Law Society website.❖

Collaborating with Indigenous peoples for systemic change

by Don Avison

DURING MY FIRST six months at the Law Society, the transition into my role immersed me in issues large and small, from the details of daily administration to the high-level policy laid out in the 2018-2020 Strategic Plan. Having attended numerous committee and Bencher meetings, I now have a better feel for the rhythm and pace of the Law Society, and an appreciation for the careful deliberation for its decisions.

The current strategic plan, for example, initially presents itself as a fairly straightforward plan, until you look closer and see how it is packed with several initiatives on many fronts. Over the three-year course of the plan, the Benchers have set priorities in relation to preserving the rights and freedoms of all persons, regulating the practice of law, improving professional education, practice standards and advice, and supporting lawyers and articled students in fulfilling their professional duties. In the current year alone, we have set ourselves to making progress in four priority areas: access to justice, mental health of the legal profession, law firm regulation and responding to the Truth and Reconciliation Commission's Calls to Action.

In these pages, you will find something to update the status of each of these priorities, but — for my part — I would like to say a few words about the potential to make meaningful progress in working with Indigenous peoples, organizations and communities in implementing the Truth and Reconciliation Commission's Calls to Action.

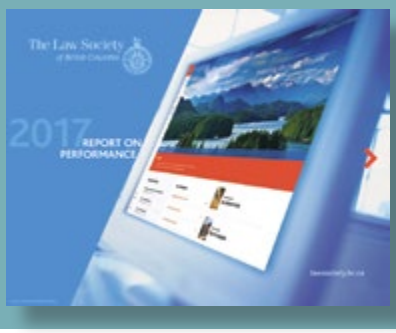
Over the course of my career, whether as Crown counsel, as director general of Justice Canada's Aboriginal Justice Initiative or, more recently, in the education sphere, I have had the privilege of working closely with Indigenous communities, organizations and governments. Perhaps the most significant aspect of that for me was the time spent as the chief negotiator for BC in relation to the British Columbia First Nations Education Jurisdiction Agreement, the related Tripartite Education Framework Agreement, and my role in chairing BC's Aboriginal Post-Secondary Education and Training Partners Table. What I learned through these experiences is that it is entirely possible to make fundamental changes to policy, but changing policy is only effective if we put the work into changing relationships.

At the annual retreat of the Law Society held earlier this month in Osoyoos, significant steps were taken to advance how the Society may address the TRC's Calls to Action. Benchers participated in a compelling dialogue with Dr. Jeanette Armstrong, a prominent leader in the Syilx First Nation who also holds the Canada Research Chair in Indigenous Knowledge and Philosophy at UBC-Okanagan. Dr. Marie Wilson, one of the three TRC Commissioners, talked about key findings about the process that developed a result that has resonated with Canadians, as well as her perspective on the challenges and opportunities that lie ahead. The retreat concluded with a Blanket Exercise that amplified much of what had been heard in the earlier sessions.

In its June meeting, the Benchers reviewed a draft action plan for how the Law Society will be engaged in improving the administration of justice for Indigenous peoples. The plan calls for us to explore concrete steps for increasing Indigenous representation in the Law Society's governance, better supporting Indigenous lawyers and law students, and improving intercultural competence of all lawyers and candidates for admission. As the plan was being discussed, the Law Society was ably represented by Dean Lawton, QC and Adam Whitcombe in a similar dialogue that was taking place at the 10th Justice Summit on the relationship between Indigenous people and the justice system.

We cannot do it alone. Reconciliation requires us all to renew and strengthen relationships. I know from personal experience that change of the magnitude envisioned by the TRC takes time and dedication but, more importantly, I know it can be accomplished.❖

2017 Report on Performance and audited financial statements now available



The Law Society's 2017 Report on Performance and audited financial statements are now available online.

Our annual report provides a progress update on strategic initiatives in the final year of our 2015-2017 Strategic Plan and provides membership statistics illustrating trends that may influence the delivery of legal services in the future.

The annual Report on Performance is a critical part of our regulatory transparency, informing the public, government, the media and the legal community about how we are meeting our regulatory obligations.❖

In brief

THE LAW SOCIETY AWARD – CALL FOR NOMINATIONS

Lawyers are invited to nominate a candidate to receive the Law Society Award in 2018. Offered every two years, the award is based on the criteria of integrity, professional achievement, service and law reform. The award is made primarily in recognition of contributions to the advancement of the legal profession or the law, but public service outside the profession will be considered.

Nominations must be received by **August 30, 2018**. For more information, including how to submit a nomination, download the flyer.

QC NOMINATIONS

Nominations for 2018 Queen's Counsel appointments are now open. The nomination process began May 25, and the deadline for submitting nomination materials is **Friday, July 20 at 4:30 pm**.

For more information and to obtain a nomination package, visit the Ministry of Justice website.

JUDICIAL APPOINTMENTS

Thomas J. Crabtree, Chief Judge of the Provincial Court of BC, was appointed a judge of the Supreme Court of BC in Chilliwack.

Diana Dorey was appointed a judge of the Provincial Court in the Fraser Region.

Jeremy Guild was appointed a judge of the Provincial Court in the Interior Region.

George Leven was appointed a judge of the Provincial Court in the Northern Region.

Peter McDermick was appointed a judge of the Provincial Court in the Northern Region.

Kristen Mundstock was appointed a judge of the Provincial Court in the Fraser Region.

Andrew Tam was appointed a judge of the Provincial Court in the Interior Region.❖

Articling offers by downtown Vancouver firms to stay open until August 17

ALL OFFERS OF articling positions made this year by law firms with offices in downtown Vancouver must remain open until 8 am on Friday, August 17, 2018. 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 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 he or she has accepted another offer before August 17, 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 17, the lawyer must receive prior approval from the Credentials Committee.

For further information, contact Member Services at 604.605.5311.❖

THE LAW FOUNDATION OF BRITISH COLUMBIA

FROM THE LAW FOUNDATION OF BC

Legal Research Fund

THE LAW FOUNDATION of British Columbia has established a fund of $100,000 per year to support legal research projects in BC that "advance the knowledge of law, social policy and the administration of justice." The maximum amount available for each project is $20,000.

To be considered, please submit a letter of intent by **September 7, 2018** for consideration at the November Law Foundation meeting. For more information about the fund, please refer to the Law Foundation of BC website at www.lawfoundationbc.org.

Materials should be sent by mail, courier, fax or email to:

Fellowships and Research Committee
Law Foundation of British Columbia
1340 – 605 Robson Street
Vancouver BC V6B 5J3
Fax: 604.688.4586
Email:
fellowshipsandresearch@lawfoundationbc.org

Changes to Continuing Professional Development

BASED ON THE recommendations of the Lawyer Education Advisory Committee, in December 2017 the Benchers approved a number of changes to the Continuing Professional Development program. Changes to eligible subject matter take effect this year, while a number of other changes will take effect in 2019.

NEW SUBJECT MATTER THAT QUALIFIES FOR CPD, effective 2018

- **Professional wellness**: The link between good health and the competent, professional practice of law is well documented by research. The Law Society now recognizes for CPD credit education programs that are designed to help lawyers detect, prevent or respond to substance issue problems and mental health or stress-related issues that can affect professional competence and the ability to fulfill a lawyer's ethical and professional duties. The program must focus on these issues in the context of the practice of law and the impact these issues can have on the quality of legal services provided to the public.
- **Knowledge related to other professions**: Educational programs that address knowledge primarily within the practice scope of other professions but are sufficiently connected to the practice of law are eligible for CPD credit. For example, a course in human anatomy may be relevant to a personal injury lawyer wanting to better understand the nature of a client's injuries.
- **Understanding the business of law**: This is one of two new topics added to the practice management component of CPD. Educational activities that improve lawyers' understanding of the technological systems underpinning legal practice will be recognized for CPD credit, as will educational activities devoted to financial systems incorporated into running a law practice.
- **Multiculturalism, diversity and equity**: Also within the practice management component of CPD, programs relating to multiculturalism, equity and diversity issues that arise within the legal context are eligible for credit. For example, educational activities related to cultural competency or the inclusion and retention of culturally diverse lawyers may be included.
- **Training for mentors and principals and governance training**: While lawyers could previously obtain CPD credit for mentoring, educational activities relating to mentorship best practices will now also qualify for credit. Educational programs that address training to be a principal, governance issues and leadership for legal professionals are also eligible for credit under the expanded set of lawyering skills topics.
- Further details on subject matter eligible for CPD credit can be found on the Law Society website.

CHANGES TO THE CPD PROGRAM, effective 2019

- **New learning mode**: Viewing a prerecorded course without the presence of another lawyer or an articled student will qualify for CPD. The Benchers agreed

continued on page 8

Unauthorized practice of law

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

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

* * *

During the period of February 16 to May 14, 2018, the Law Society obtained six undertakings from individuals and businesses not to engage in the practice of law.

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

On February 23, 2018, Mr. Justice Ward K. Branch ordered that disbarred lawyer **Kevin Alexander McLean**, of Vancouver, BC, be permanently prohibited from engaging in the practice of law, regardless of whether he charges a fee. The order also prohibits McLean from referring to himself as a lawyer, retired or otherwise, or in any other way that connotes that he is entitled or qualified to practise law. McLean is prohibited from commencing, prosecuting or defending proceedings in any court on behalf of others and from initiating proceedings on his own behalf without leave of the court. The court found that McLean, while suspended and disbarred, had engaged in the practice of law on behalf of third parties and companies to which he was an officer and director. The court awarded the Law Society its costs. McLean has filed an application to set aside this order.

On May 11, 2018, Madam Justice D. Jane Dardi granted an injunction permanently prohibiting **Ronald James McKinnon**, of Vancouver, BC, from engaging in the practice of law, falsely representing himself as a lawyer, and commencing, prosecuting or defending proceedings in court on behalf of others. The Law Society alleged that McKinnon, who is not and has never been a lawyer in Canada, falsely referred to himself as a lawyer, retired or otherwise, to several witnesses and purported to provide legal services with respect to a criminal law matter for a fee. The court also awarded the Law Society its costs at $3,495.33.

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

Law firm regulation pilot set to launch

THE LAW FIRM regulation initiative is well under way. Registration of firms began in May and is scheduled to be completed by mid-June. The next step is the implementation of a pilot project to test a self-assessment tool that has been developed for pilot participants to assess the effectiveness of their firms' policies and processes with regard to eight core areas of professional practice. The pilot is expected to wrap up by year-end, and the outcome will help the Benchers determine the future of law firm regulation in BC.

The purpose of law firm regulation is to help the profession leverage the benefit that strong, positive firm cultures can have on the practice of law in order to reduce instances of unprofessional behaviour. Firms that create or maintain policies and processes that address the elements identified under the law firm regulation scheme will have management structures in place that — the Law Society believes and studies elsewhere bear out — will address practice issues before they result in complaints.

WHAT IS THE VALUE OF THE SELF-ASSESSMENT EXERCISE?

The self-assessment is an educational tool that encourages firms to examine their practice management systems and to evaluate the extent to which firm policies and processes address core areas of professional and ethical practice. The self-assessment will also provide the Law Society with information about where firms may require additional practice resources and support. The pilot is also an opportunity to evaluate the clarity and functionality of the self-assessment tool and the process by which it is administered.

The self-assessment exercise implemented as part of the pilot project keeps in mind that lawyers are busy people and that collecting resources and assessing the strength of the firm's practice management systems can be time-consuming. The assessment tool is designed to facilitate a clear and efficient process for self-evaluation and provides firms with a comprehensive collection of guidance material and resources to help their lawyers improve their practice management and better serve their clients.

WHO PARTICIPATES?

Up to 10 per cent of BC firms will be randomly selected to participate in the self-assessment pilot. Participants will be drawn from the list of registered firms and will ensure a representative sample of the varying sizes and geographic diversity of the province's firms. Pursuant to the new law firm regulation rules, it is mandatory that selected firms complete and submit their self-assessment to the Law Society.

All Bencher firms will participate in the pilot project, to provide Benchers with first-hand experience with the content and

functionality of the tool.

With the exception of Benchers, members of firms who take part in their firms' self-assessment may claim up to two hours of CPD credit for time they personally spend on the self-assessment, in recognition of the educational value of self-evaluating and the time pilot participants are likely to spend on completing the exercise.

WHAT IS THE FORMAT OF THE SELF-ASSESSMENT EXERCISE?

The self-assessment exercise has two main components, a self-assessment report and a workbook.

Self-assessment report

The online self-assessment report is the mandatory portion of the exercise. Firms participating in the pilot must evaluate their performance on a four-point scale, in relation to elements related to core areas of professional and ethical firm practice. Sole practitioners, who are also considered "firms" for the purpose of law firm regulation, will be directed to a version of the report that has been tailored to lawyers practising on their own. Firms will be asked to report on their *current* approach to each of eight core elements. They are not expected to implement new or revised policies or processes.

The self-assessment report contains guidance and suggestions for best practices, as well as educational resources that firms may consider as they complete the self-assessment. As part of their evaluation, firms will also be asked to identify areas where they would benefit from additional practice resources and to respond to questions that will provide the Law Society with feedback on the self-assessment.

The information firms provide will be used only for statistical analysis and to help the Law Society develop additional practice resources and improve the self-assessment process. It will not be used for any disciplinary purpose.

Self-assessment workbook

The workbook is an optional tool designed to help firms engage more deeply in the self-assessment exercise. It is for firm use only and is *not submitted* to the Law Society. As with the self-assessment report, a separate workbook has been created for sole practitioners. It can serve as a working copy of the firm's self-assessment, a record and an ongoing resource. Sections are provided for firms to highlight areas where they have strong policies and processes in place and to identify those areas that may require more attention.

The workbook can be downloaded and saved. Some firms may find it useful to review the workbook in advance of completing the online self-assessment report to gain a sense of the scope of the exercise. Others may use it as a focal point for discussion as the firm works through the online report. Some firms may return to the workbook once the self-assessment report has been completed and use it as a tool to address aspects of firm practice that the report revealed need additional attention.

Whether used separately or together, the report and workbook will help identify gaps in policies and processes and offer any guidance and resources that will assist firms in improving their practice management systems.

WHAT IS THE TIMELINE OF THE PILOT?

Firms selected to participate in the pilot will be contacted in June. These firms will be provided with a link to the self-assessment report, which includes a link to the workbook, and will be required to complete and submit the report to the Law Society within three months.

WHAT ARE THE NEXT STEPS?

The Law Firm Regulation Task Force aims to report on the outcome of the pilot project and present recommendations to the Benchers by the end of 2018. The Benchers will consider the recommendations in determining the future course of law firm regulation.❖

Continuing Professional Development ... from page 6

to remove the previous exclusion of solo online learning for a number of reasons, including concerns that the restriction made it difficult for sole practitioners, including those in remote communities, to access pre-recorded CPD programming when another lawyer was not available to participate.

- **Carry-over of credits**: Starting in 2019, lawyers will be permitted to carry over up to six CPD credits from one year to the next. This excludes the two-hour ethics and practice management CPD requirement, which must be completed each year. Lawyers must still report their CPD by December 31 every year and must fulfill at least six CPD requirements in a calendar year.
- **Teaching the same subject matter up to twice in a calendar year**: This is a minor modification to the teaching accreditation criteria, recognizing that, even in instances of repeat teaching, instructors are required to re-engage with the material and modify aspects of their presentations, which provides an additional learning opportunity for the instructor.
- **Writing for law firm or other websites**: Lawyers will be able to receive CPD credit for writing for law firm or other websites if the content is substantially related to law or legal education. Material that is developed primarily for the purpose of marketing to existing or potential clients will not be eligible for credit. Lawyers will not receive credit for writing on blogs or wikis unless they can demonstrate that submissions are subject to editorial oversight.
- **Mentoring eligibility**: The period of time a lawyer must practise to qualify as a mentor will be reduced to five of the past six years. Lawyers will receive mentoring credit for mentoring another lawyer if they have engaged in five years of full-time practice or the part-time equivalent immediately preceding the current calendar year, where part-time practice is counted at a rate of 50 per cent of full-time practice.

Further details on eligible activities can be found on the Law Society website.❖

Practice advice

by Barbara Buchanan, QC, Practice Advisor

SCAMS AGAINST LAWYERS PERSIST – WHAT ARE THEY AND WHAT CAN YOU DO ABOUT THEM?

Clients come to lawyers for wise counsel. However, fraudsters pretending to be clients also come to lawyers, looking to walk away with some trust account money. Have you been the target of a scam in your law practice? If not, it may only be a matter of time until you or someone else at your firm is targeted.

Law firms generally have good physical office security and cyber-security systems, including anti-virus programs, strong and secure passwords, firewalls and staggered back-up systems (see our 10 simple security tips here). Unfortunately, it takes just one lawyer or employee to be inattentive — leaving a laptop, thumb drive or briefcase in the car, leaving an office door unlocked, or being duped by a scammer into doing the wrong thing — to potentially cause financial loss, unauthorized access to confidential information, inconvenience and more. Security needs to be more than a good cyber-security system; it needs to involve education and policies for all employees.

Some common scams against lawyers

Being alert to the various scams directed at lawyers can protect you and your firm. The most common scam attempted against BC lawyers is what we colloquially refer to as the "bad cheque scam." It should be noted that it does not always involve a bad cheque. This is a type of social engineering scam that tricks lawyers into believing, wrongly, that real funds have been deposited into trust. Others include the phony change in payment instructions (a scammer sends an email purportedly from an actual client or, as in a recent scam in Saskatchewan described in the Law Society of Manitoba's *Communiqué* (p. 10), from another law firm with new instructions about where to send funds) and the phony direction to pay (a scammer sends an email purportedly from a lawyer in your firm asking you to transfer funds). Scammers might also trick you into clicking on an infected link that exposes you to malware, allowing the scammer to steal passwords and confidential information, or you might find yourself the victim of a ransomware attack that locks your files and makes them inaccessible. There are other kinds of scams to look out for too, such as value fraud (inflating the price of real property to obtain a bigger mortgage), fraudulent investment schemes and phony lawyers.

For information about these and other scams, and suggestions on how to protect yourself, see Fraud Prevention and Fraud Alerts on our website. For a look at frauds against the broader population, see the government's Canadian Anti-Fraud Centre website.

Also, see *BC Code* rules 3.2-7, 3.2-8 and 3.7-7(b) for ethical guidance with respect to dishonesty and fraud by clients, and Law Society Rule 3-109 regarding a client's criminal activity.

The bad cheque scam

Scammers continue to pretend to be legitimate new clients, using tricks such as a phony debt collection scam, the phony purchase and sale of equipment, such as vessels, or other ruses. Whatever their stratagem, the scammer's aim is usually to coerce a lawyer to deposit a fraudulent financial instrument, such as a bank draft, certified cheque or third-party business cheque, into a trust account, and then to trick the lawyer into electronically transferring funds to the scammer before the lawyer finds out that the instrument was worthless. The scams range in sophistication from the very obvious to the highly refined. Although most lawyers come to realize that they have become involved in a bad cheque scam before paying money out of trust, some lawyers have been caught. In any case, lawyers often waste valuable time and resources before appreciating the truth: their new client is not a new client at all but, rather, is someone who is trying to steal from them.

Protect yourself. Get familiar with the scam's common characteristics and risk management tips. Review the bad cheque scam list of names that scammers have used in BC (an alphabetical list from A to Z), along with various ruses and documents, as part of your firm's intake process. Appoint someone in your firm to ensure that lawyers and staff are kept up to date with Law Society notices.

Remember that when a new client resides outside of Canada and you need to verify identity for a "financial transaction" (as defined in Law Society Rule 3-91), you must have a written agreement or arrangement with an agent who will meet with the client to verify the client's identity. A sample agreement with an agent for verification of a client's identity is in Appendix II of the Client Identification and Verification Procedure Checklist in the Practice Checklists Manual.

The Lawyers Insurance Fund, Practice Advice department and Continuing Legal Education Society of BC presented a free one-hour webinar for lawyers regarding

these scams: *The bad cheque scam – don't get caught*. Visit the CLEBC website to view the webinar.

Report potential new scams to practice advisor Barbara Buchanan, QC at bbuchanan@lsbc.org. Reporting allows us to know what scams lawyers are experiencing, to notify the profession and to update the list of names, documents and ruses.

WHAT GDPR MEANS AND HOW IT MAY APPLY TO YOU

The European Union's General Data Protection Regulation (GDPR) is a new global standard for privacy legislation. It came into force on May 25, 2018 and requires private sector organizations, which can include Canadian law firms, to comply with significant obligations with respect to EU residents' personal data. Even if your law firm does not have an office in the EU, you may offer goods and services to individuals in the EU or monitor the behaviour of individuals in the EU and thus acquire obligations. If you operate in the EU, have clients in the EU, or collect, use or disclose personal information of an EU "data subject" (the identified or identifiable natural person who is the subject of the personal data), you will likely need to comply with the GDPR. Organizations that fail to comply potentially face large fines, higher than those under the *Personal Information Protection Act*.

The Office of the Information & Privacy Commissioner for British Columbia has prepared helpful guidance, *Competitive Advantage: Compliance with PIPA and the GDPR*. The guidance document explains that "it helps organizations in BC determine whether they are subject to the GDPR and explains how to comply with both PIPA and the GDPR." Some aspects of the GDPR have no equivalent in PIPA or may be different or more challenging (e.g., mandatory breach notification within 72 hours).

PRACTICE CHECKLISTS MANUAL

Whether you are recently called or a senior lawyer, checklists help keep you organized and prevent you from failing to ask important questions or miss important steps. Check out the Law Society's Practice Checklists Manual, free and updated yearly with the assistance of the Continuing Legal Education Society of BC and many contributors). The 2017 update reflects *BC Code* rule changes, Law Society Rule changes, legislative amendments, new cases and changes in practice (see Highlights of the 2017 Practice Checklists Manual and refer to the individual checklists for more details).

The manual, a professional reference for lawyers, consists of 41 checklists in the following subject areas:

- client identification and verification;
- corporate and commercial;
- criminal;
- family;
- litigation;
- real estate;
- wills and estates;
- human rights; and
- immigration.

While the checklists are comprehensive, they are not exhaustive, so consider the checklists as a secondary resource to assist you in organizing a matter. Because the checklists are available in Microsoft Word format, you can download and customize them to suit your particular practice.

CAUTION ABOUT WITNESSING NONSENSICAL DOCUMENTS

Lawyers are reminded that, if an organized pseudolegal commercial argument litigant (known as an OPCA litigant — a term coined by Rooke, J. in *Meads v. Meads*, 2012 ABQB 571, which includes freemen-on-the-land, detaxers, sovereign men, natural persons and others) attends your office, you should not witness or notarize nonsensical documents, potentially giving an air of credibility to them and disrupting court operations. Generally discourage individuals from commencing useless proceedings (*BC Code* section 2.1 Canons of Legal Ethics, and rules 2.1-1(a) and 3.2-4). See more information about OPCA litigants in prior *Benchers' Bulletins* ("Freeman-on-the land and OPCA litigants," Spring 2017 and "The Freeman-on-the-Land movement," Winter 2012) as well as in a number of court decisions, including *Little Shuswap Lake Indian Band v. August-Sjodin*, 2016 BCSC 1214 (CanLII). For broader guidance about witnessing signatures, see *BC Code* Appendix A – Affidavits, Solemn Declarations and Officer Certifications and its annotations, and for other tips about witnessing signatures, see Witnessing a signature? Stop. Read this first. on our website. ❖

Services for lawyers

Law Society Practice Advisors

Barbara Buchanan, QC
Brian Evans
Claire Marchant
Warren Wilson, QC

Practice advisors assist BC lawyers seeking help with:

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

Tel: 604.669.2533 or 1.800.903.5300.

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

◆

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

◆

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

◆

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

Conduct reviews

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

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

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

BREACH OF ASSET RESTRAINING ORDER

A lawyer assisted his client in breaching an asset restraining order issued under section 91(1) of the *Family Law Act,* contrary to rules 2.1-1, 2.1-3, 2.2-1 and 5.1-2 of the *Code of Professional Conduct for British Columbia.* The client was in financial difficulties due to the order, and the lawyer negotiated a variation of the original order with opposing counsel. After the lawyer and opposing counsel had agreed to the variation of terms but before a consent order had been filed with the court, the lawyer paid his client $10,000 from the trust account subject to the order. Once a consent variation order was filed with the court, the lawyer paid from his trust account his own legal fees totalling $11,862.34 and $4,972.95 in property taxes on the matrimonial home. The consent variation order allowed the client to access a specified bank account but did not cover funds in the lawyer's trust account. The matter was subsequently transferred to new counsel, and shortly after that opposing counsel became aware that the asset restraining order had been breached. The lawyer fully admitted the misconduct and repaid the legal fees he withdrew from the trust account.

A conduct review subcommittee indicated that it was inappropriate to withdraw funds from a trust account subject to an asset restraining order. Even if the consent variation order allowed access to the trust funds, the lawyer paid his client $10,000 before the consent order was filed. As officers of the court, lawyers must follow orders of the courts and ensure their clients do so as well. The lawyer readily agreed. He stated that he was aware of asset restraining orders but had no prior experience with them. From now on, he agreed he would give more time and consideration to asset restraining orders. The lawyer now understands that he should contact Law Society practice advisors to confirm his professional obligations. (CR 2018-12)

BREACH OF TRUST ACCOUNTING RULES

A lawyer improperly withdrew $240 from an aged trust account without having incurred any fees or disbursements, contrary to Law Society Rule 3-64(1). He created a false invoice and did not deliver the invoice prior to withdrawing funds from the trust account, contrary to Rule 3-54(1). A compliance audit revealed the misappropriation of funds, and the lawyer returned the funds to the party entitled to them. The lawyer admitted the misconduct and described his actions as reckless and lazy.

A conduct review subcommittee advised that misappropriation of trust funds strikes at the heart of a lawyer's integrity and severely undermines public trust in lawyers. At the time of the misconduct, the lawyer knew his conduct was improper, but he did not know how to properly deal with aged trust accounts. He is now familiar with Rule 3-89, which permits a lawyer in possession of unclaimed trust funds to apply to pay them to the Law Society. He now takes voided cheques from clients to facilitate the return of trust funds and has an additional staff person to assist in looking after aged trust accounts. The lawyer has also arranged for learning opportunities regarding the proper handling of aged trust accounts for his colleagues and others in the legal community. (CR 2018-13)

BREACH OF TRUST CONDITIONS

While representing an executor in an estate manner, a lawyer breached trust conditions by releasing estate funds held in trust without providing notice or obtaining consent from all beneficiaries, contrary to rules 2.1-4, 5.1-6 and 7.2-11 of the *Code of Professional Conduct for British Columbia.* The lawyer's firm held the estate funds in the firm's trust account subject to trust conditions that required the executor to obtain consent from all residual beneficiaries before paying out any funds from trust. The lawyer paid from the trust account legal bills totalling $37,024.74 and income tax accounts and accountant's fees totalling $26,440.97. She did not notify the beneficiaries and obtain their consents prior to withdrawing funds from the trust account. A lawyer representing one of the residual beneficiaries became aware of the breach of trust conditions when he requested an executor's accounting of estate funds. He wrote to the lawyer advising of the breach. As a result, the lawyer wrote to all beneficiaries enclosing invoices for legal fees and accountant's fees and a request for payment of taxes from the Canada Revenue Agency. She also returned to the trust account the funds received by the firm for payment of legal fees. The lawyer acknowledged that her conduct was inappropriate. She was aware of and had read the trust conditions, but explained that it did not occur to her that paying out these estate expenses would breach trust conditions. The trust conditions were unusual for her files, and estate expenses are usually paid out in the normal course of estate practice.

A conduct review subcommittee advised that the lawyer's conduct was inappropriate because she breached trust conditions, the amounts involved were significant and multiple breaches occurred. The subcommittee emphasized the fundamental importance of complying with trust conditions.

The lawyer now ensures compliance with trust conditions by posting the agreement on the client file and highlighting it. In addition, before writing any cheques from the trust account, the client file is checked for any undertakings to ensure compliance. (CR 2018-14)

FAILURE TO MEET FINANCIAL OBLIGATIONS

A lawyer failed to remit PST and GST on time, contrary to a lawyer's duty to promptly meet financial obligations under rule 7.1-2 of the *Code of Professional Conduct for British Columbia.* The Canada Revenue Agency issued a requirement to pay the outstanding tax debt, which the lawyer did not satisfy within seven days. The lawyer did not report his failure to satisfy a monetary judgment to the Law Society, contrary to Law Society Rule 3-50. The misconduct occurred during a transition period when the lawyer moved from practising in a large firm to being a sole practitioner, then ultimately to a shared office space arrangement with a colleague.

The lawyer was also experiencing serious medical issues during this time. He had engaged a bookkeeper to set up the necessary systems for his firm and accepted the bookkeeper's assurances that his firm was in compliance with all tax obligations. He enquired about tax registration and payments, but relied on his bookkeeper rather than taking matters into his own hands as he should have done. A compliance audit revealed that the lawyer was not fully compliant with his tax obligations. The lawyer has since met all his financial obligations and has brought his firm into compliance with all GST and PST requirements. He stated that he genuinely but erroneously believed that his duty to report unsatisfied monetary judgments did not cover tax debt.

A conduct review subcommittee discussed the extremely serious nature of a lawyer's duty to meet financial obligations and to report unsatisfied judgments. The subcommittee noted that these matters are generally subject to disciplinary hearings rather than a conduct review. The subcommittee also discussed other topics currently of concern to the Law Society related to money laundering rules and management of trust accounts. The lawyer demonstrated awareness of these issues and stated that he reviews all legal bulletins the Law Society sends out.

The lawyer has taken several remedial steps. He has properly set up his firm for PST and GST registration, reporting and remittance. He has obtained software called ESILaw 360 to improve record keeping and has set up reminders on his computer for tax payment dates with back-up diarization. He has trained his bookkeeper and additionally has hired another outside accountant. He has reviewed the Law Society Rules, the *BC Code* and a trust reporting manual associated with a professional development course approved by the Law Society. He contacts the Law Society practice advisors when he is uncertain about practice matters and has signed up for the Small Firm Practice Course. He shares office space with a colleague and discusses legal updates and bulletins with him. The subcommittee highlighted the importance of having a contingency plan in place for unexpected absences or other emergencies in the future. The lawyer has an emergency plan for file coverage with support from his colleague, who also provides additional checks for GST and PST compliance. (CR 2018-15)

CLIENT IDENTIFICATION AND VERIFICATION

A compliance audit revealed that a lawyer failed to obtain the necessary client identification and verification in a non-face-to-face financial transaction, contrary to Law Society Rule 3-104. The lawyer left the conduct of the file with a conveyancer, who did not follow his usual client verification and identification procedure. However, his usual client identification and verification procedure for non-face-to-face transactions did not comply with the requirement under the Rules. The lawyer acknowledged his misconduct.

A conduct review subcommittee advised that the lawyer's conduct was inappropriate because he failed to comply with the client identification and verification rules and did not adequately supervise his staff. The lawyer has now changed his client identification and verification procedure using precedents available on the Law Society's website. He has forwarded the updated client identification and verification documents to Trust Assurance. The lawyer is now more diligent in fulfilling his continuing obligation to adequately supervise his staff. (CR 2018-16)

In another case, a lawyer failed to verify his clients' identities using government-issued identification, contrary to Law Society Rule 3-102. The clients were the brother and sister-in-law of the lawyer's former law partner, who has been acquainted with the lawyer for more than 40 years. The lawyer believed that he could rely on information from his former law partner as verification of his clients' identities. On three other files involving long-term clients, the lawyer relied on prior verification of client identities without having retained copies of the independent source documents (such as valid government-issued identification), contrary to Rule 3-107. The lawyer acknowledged his wrongdoing and now understands the importance of the client identification and verification rules.

A conduct review subcommittee advised that client identification and verification rules are critical in ensuring that lawyers' trusts accounts are not used for money laundering or other illegal activities. To ensure compliance with the Rules, the lawyer has downloaded the applicable Law Society checklists and adapted them to his practice. In addition, he now takes copies of photo identification for all new clients, whether the matter involves a financial transaction or not. (CR 2018-17)

In another case regarding a conveyancing matter, a lawyer failed to comply with client identification and verification rules in a non-face-to-face financial transaction involving a client not present in Canada, contrary to Law Society Rule 3-104(5). The lawyer was referred a client by an acquaintance. The lawyer or his staff knew the relevant documents would not be executed in person. The lawyer emailed his client a number of documents to be executed before a notary and a letter specifying a list of acceptable identifications and the manner in which the documents were to be completed. A notary public located in the United States emailed the documents to the lawyer but did not complete the documents to the lawyer's specification. The lawyer had never worked with the notary before, did not pay the notary's fees, and did not enter into any written agency agreement or arrangement with the notary. The lawyer admitted his misconduct and further admitted that he was unaware of the requirement for an agency agreement in a non-face-to-face financial transaction involving a client not present in Canada. He admitted that he had completed approximately 30 such transactions since 2009 that were not compliant with the Rules.

A conduct review subcommittee advised the lawyer of the vital importance of client verification rules in guarding against money laundering and fraud, especially in non-face-to-face transactions. A written agreement between a lawyer and an agent for the purpose of client verification reduces these risks because the lawyer, not the client, retains the agent. The subcommittee was particularly dismayed that the lawyer was unaware of the requirement for a written agreement with an agent given that these rules have been in force for nearly nine years. The rules are directly relevant to the lawyer's area of practice, and the lawyer had never followed these rules. The lawyer acknowledged the subcommittee's concerns and expressed regret. He now understands the importance of the rules and will follow them scrupulously to prevent any similar violations in the future.

The lawyer has since taken several remedial steps. He provided his staff with the Law Society's Client Identification and Verification Checklist and has ensured that they are fully aware of the rules regarding non-face-to-face transactions. He has created appropriate precedents in the firm's conveyance process and ensures that an agent is retained when required. He now personally reviews every file involving non-face-to-face transactions. (CR 2018-18)

CLIENT IDENTIFICATION AND VERIFICATION / DUTY TO GUARD AGAINST BECOMING THE TOOL OR DUPE OF OTHERS

A lawyer unwittingly received and deposited a fraudulent monetary instrument into his trust account. He made subsequent withdrawals from

the trust account, resulting in a trust shortage totalling $480,931.50. In failing to vigilantly guard against becoming the tool or dupe of an unscrupulous client, the lawyer breached rule 3.2-7 of the *Code of Professional Conduct for British Columbia*. The lawyer sought and received identification from his client but took no steps to verify his client's identity, contrary to Law Society Rule 3-104.

The lawyer received an unsolicited email requesting assistance in a debt collection matter. The lawyer received and deposited into his trust account a corporate cheque from a third party that he believed was a bank draft. Under instructions from his client, the lawyer paid a total of $478,590.00 to third parties and paid himself for legal fees. Once the fraud was discovered, the lawyer reported the trust shortage to the Lawyers Insurance Fund and personally covered the trust shortfall. The lawyer did not obtain the client's contact information or any identification documents until after he had disbursed funds from his trust account. He did not seek to verify the emailed copies of his client's driver's licence and passport. The lawyer readily admitted that his conduct was inappropriate.

A conduct review subcommittee advised that the lawyer failed to be on guard against becoming the tool or dupe of others despite numerous red flags that should have elicited a query: the spontaneous, unsolicited, generic initial email from the client; the off-shore location of the client; the changing location of the debtor; the amateurish loan agreement; the client's failure to pay the $1,500 retainer; the lack of identification documents; minimal legal work required of the lawyer other than handling of funds; the lack of connection between the issuer of the cheque and the debtor; the discrepancy in the dates and names on the monetary instruments; and the client's request to pay out to unrelated third parties. The fraudster was also listed on the Law Society's website as a person connected to similar frauds. The lawyer admitted that, while he was generally familiar with the list of frauds published on the Law Society's website, he did not consider checking the list of names.

The lawyer has since modified his intake forms to comply with the client verification rules. He no longer acts for people he has not personally met unless the potential client is referred to him or has a substantial connection to the community in which he works. To guard against fraud, the lawyer now ensures all funds have cleared the bank before making any payouts and will more carefully scrutinize all financial instruments. The subcommittee recommended that the lawyer pay closer attention to the Law Society's notices regarding ongoing frauds. (CR 2018-19)

In another case involving a real estate conveyancing matter, a lawyer unwittingly transferred almost $1.2 million to a fraudster, having breached various requirements under the Law Society Rules and the *Code of Professional Conduct for British Columbia*. The lawyer failed to follow the client identification and verification requirements, contrary to Rules 3-102, 3-104 and 3-107. The lawyer did not properly communicate with his clients to confirm their instructions and failed to provide competent and diligent service, contrary to rule 3.2-1 of the *BC Code*. The lawyer failed to vigilantly guard against fraud, contrary to rule 3.2-7 of the Code and failed to adequately supervise his staff, contrary to rule 6.1-1 of the Code. As a result of the lawyer's misconduct, his clients suffered significant financial and personal losses.

The lawyer was contacted by his clients' daughter to assist in the sale of a residence in Canada. The clients and the daughter lived outside of Canada, and the conveyancing documents were executed in Taiwan before a notary. The lawyer did not have an agency agreement with the notary and did not obtain a copy of the source identification documents. During the course of the retainer, the lawyer took instructions from the daughter by email, but at some point a fraudster began communicating from a similar email address. The fraudster altered the clients' instructions regarding payment of funds, and the lawyer ultimately wired approximately $1.2 million to the fraudster's bank account without confirming those instructions directly with his clients. Once the fraud was revealed, the lawyer gathered sufficient funds to eliminate the trust shortage, but did not pay those funds to his clients. The clients initiated legal proceedings against the lawyer, which were settled by the Lawyers Insurance Fund. The clients suffered $154,850 in losses in addition to their legal and mediation costs. The clients are of frail health and wished to avoid the costs and the risks of a protracted legal process. The clients were not fully restituted, and the funds gathered to eliminate the trust shortage were eventually released back to the lawyer. The lawyer acknowledged his misconduct and admitted that he should have been more vigilant and alert to the possibility of fraud given the significant alteration in client instructions.

A conduct review subcommittee stressed the importance of staying vigilant and scrupulously complying with the requirements under the Rules and the Code aimed at mitigating the risks inherent in the real estate market. The lawyer's conduct was inappropriate because he failed to take reasonable steps to verify his clients' identities, contrary to Rule 3-102. He did not have an agency agreement in place for the purpose of client verification in a non-face-to-face financial transaction involving clients not present in Canada, contrary to Rule 3-104. The lawyer failed to obtain and retain copies of the independent source documents used for client verification, contrary to Rule 3-107. The subcommittee noted that closer file inspection, better supervision and better office procedures ought to have detected the fraud.

The lawyer has taken significant remedial steps to prevent a recurrence of this episode. He and his staff have undergone fraud detection training, and his office no longer accepts email instructions with respect to financial transactions without confirming those instructions directly with the client. The subcommittee recommended that the lawyer take and provide fraud training at regular intervals. The lawyer has put in place proper procedures for client identification and verification and ensures he maintains appropriate involvement in his files to avoid excessive delegation to his staff. The subcommittee further recommended that the lawyer utilize his support network should file issues arise in the future. The subcommittee would have preferred the lawyer make full restitution to his clients, but recognized that it had no authority to require that the lawyer do so. (CR 2018-20)

BREACH OF UNDERTAKING

A lawyer breached his undertaking to provide payout particulars of a residential conveyance by a certain date, contrary to rules 5.1-6 and 7.2-11 of the *Code of Professional Conduct for British Columbia*. The lawyer failed to respond to communication from the notary enquiring whether he had fulfilled the undertaking, contrary to rule 7.2-5. The lawyer represented the vendors in the sale of a residential property and provided an undertaking to a notary acting for the purchasers. The undertaking required the lawyer to provide payout particulars within five business days of the completion date. The notary did not receive the payout particulars by the deadline, so she attempted to follow up with the lawyer by email and voicemail and with the lawyer's staff. The lawyer explained that, before the deadline, he attempted to send the documents by fax, which did not transmit successfully, and by regular mail. He believed he had complied with the undertaking by doing so. He acknowledged his misconduct and eventually delivered the documents to the notary almost two months

after the deadline. The lawyer maintained that he was unaware of the notary's attempts to communicate with him but acknowledged that he was ultimately responsible for his office systems to ensure messages are delivered to him.

A conduct review subcommittee emphasized the importance of undertakings in the Law Society's objective of protecting the public interest and ensuring the proper functioning of legal transactions. Every breach of an undertaking erodes public confidence and puts the efficient operation of our real estate system at risk. The subcommittee stressed that there is no such thing as a minor breach of an undertaking.

The lawyer has taken several remedial steps to improve his office procedures. He now uses a courier to send documents when necessary rather than Canada Post and requests confirmation of receipt when sending documents by fax or email. He has added two experienced employees and supervises his staff and their emails to ensure compliance with the new process. He requires new clients to make appointments and no longer takes on litigation files. He has purchased software programs to assist in his practice and is working on improving his own computer skills and his bring-forward system. For practice support, education and advice, the lawyer has joined the South Asian Bar Association of BC, has taken the Small Firm Practice Course offered by the Law Society and has a partner in his office. The subcommittee recommended other resources, such as the Continuing Legal Education Society's undertakings course and a membership in the Canadian Bar Association Real Property section in his area. (CR 2018-21)

CONFLICT OF INTEREST / QUALITY OF SERVICE

A lawyer acted in a conflict of interest by failing to complete a conflicts check in a timely manner, contrary to rule 3.4-10 of the *Code of Professional Conduct for British Columbia*. The lawyer also provided poor quality of service by failing to properly file lien documents, contrary to rules 3.1-2 and 3.2-1. The lawyer was retained to place a lien on a matrimonial home that was jointly owned by the client's husband and his father. The lawyer did not perform a timely conflicts check, and his staff eventually discovered that the lawyer had previously acted for the husband in a related matter. Further, the staff person discovered the lien was never registered due to an administrative error. The client's husband had transferred his interest in the home to his father in the intervening period, and the client suffered losses as a result. The misconduct occurred when the lawyer was transitioning between two law firms and was required to conduct two separate conflicts checks for new files. During the same time period, the lawyer's practice was unusually busy and complicated due to housing market conditions. The lawyer acknowledged his misconduct and recognized that a hot housing market exacerbated the flaws in his practice.

A conduct review subcommittee advised that the lawyer acted inappropriately because he acted in a conflict of interest and his conduct fell below the standard of a competent lawyer, resulting in significant harm to his client. The lawyer has since taken remedial steps to address his lack of office systems by implementing efficient office policies and systems. He has reduced his commitments outside of his practice and no longer takes on files he cannot competently handle. (CR 2018-22)

In another case, a lawyer acted for two family members with adverse interests in a business transaction, contrary to her duty to avoid conflicts of interest under rules 3.4-1, 3.4-2 and 3.4-5 of the *Code of Professional Conduct of British Columbia.* The lawyer represented a company that was one-third owned by each of her mother, a family friend and her maternal aunt. She received instructions over email to transfer shares of the company from her aunt to the lawyer's father. The email also contained a signed letter of resignation as director of the company from her aunt. The lawyer did not directly communicate with the aunt to confirm those instructions. The lawyer sent documents to effect the transfer of shares to her father and asked that he arrange for them to be signed by her mother, the family friend and her aunt. She did not send a copy of the documents to her aunt or other shareholders or directors.

A short time later, the family friend and the lawyer's father asked the lawyer to act for the company in the sale of the company. The lawyer did not confirm these instructions with the other shareholders or directors and did not question whether her father, who held no formal role in the company, had the authority to give instructions. Around the time of closing the lawyer became aware of a dispute between the aunt and the lawyer's father over the distribution of funds. The aunt called the lawyer to inform her that she did not transfer her shares nor had she resigned as director. The lawyer is unclear as to the exact timing of the call and whether it was before or after the closing date. The lawyer did not document the call and did not follow up with the aunt in writing. After consulting with a Law Society practice advisor, the lawyer advised all parties that she would hold the funds in trust pending receipt of joint instructions or a court order. In another email, the lawyer advised the aunt to seek independent legal advice. The aunt alleges the lawyer's father hacked into her email and forged her signature on the share transfer. The sale proceeds remain in the lawyer's trust account, and several lawsuits are outstanding. The aunt made a complaint to the Law Society.

A conduct review subcommittee advised the lawyer that her conduct was inappropriate because she failed to obtain express or implied consent to act jointly for her clients and to avoid acting in a conflict of interest. The subcommittee also discussed a lawyer's obligation under rule 3.2 of the *BC Code* to provide a quality of service that is competent, timely, conscientious, diligent, efficient and civil, regardless of personal relationships. The lawyer failed to directly confirm instructions and communications from the complainant and relied on her father to relay important information and documents to other shareholders. The lawyer did not consider whether there was an actual or potential conflict of interest in acting in this matter, whether joint retainer rules applied or whether any of the parties should seek independent legal advice. The lawyer failed to properly document communications with her clients in her file.

The lawyer no longer acts for family members or friends and said she will be clearer about whom she is acting for. She now confirms email instructions directly with the client, either verbally or in person. She now keeps detailed file notes and, where a file involves more than one client, such as a company with several shareholders, takes instructions from and communicates with all shareholders rather than with a single shareholder. (CR 2018-23)

QUALITY OF SERVICE

A lawyer took on a debt-collection matter that he was not competent to conduct and failed to document important client communications, contrary to rules 3.1-2 and 3.2-1 of the *Code of Professional Conduct for British Columbia.* The lawyer repeatedly lied to his client to hide his incompetence, contrary to rules 2.2-1 and 3.2-2. The lawyer was instructed to commence foreclosure proceedings and attempted to draft materials despite being unfamiliar with foreclosure matters. When he experienced difficulties drafting the pleadings in a timely manner, rather than seeking assistance, he lied to the client about having filed the petition for foreclosure. He continued to lie to the client on subsequent occasions and

continued on page 19

Discipline digest

BELOW ARE SUMMARIES with respect to:

- Daniel Kar-Yan Kwong
- Ronald Wayne Perrick
- Sumit Ahuja
- Thomas Paul Harding
- Malcolm Hassan Zoraik
- Brian Peter Grant Kaminski

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

DANIEL KAR-YAN KWONG

Called to the bar: January 1, 2013
Ceased membership: February 27, 2017
Agreed statement of facts: February 8, 2018

FACTS

In December 2013, a Swiss couple retained Daniel Kar-Yan Kwong to assist them in immigrating to Canada. They had bought a wilderness lodge in BC and planned to move to BC to operate it as a business. Between May 2014 and spring 2015 Kwong repeatedly said or implied to his clients that he had filed applications to Citizenship and Immigration Canada when he had not.

In February 2014, another party retained Kwong's firm. Kwong submitted a successful application under the BC Provincial Nominee Program, then between June and November 2014 he repeatedly told the client he had submitted a permanent residence application when he had not, nor did he tell him that his certificate of nomination had expired. In December Kwong submitted a permanent residence application under a new Express Entry program without telling the client, and he told the client he had submitted an application for an extended work permit when he had not.

In September 2013, a permanent resident retained Kwong to assist him in sponsoring his wife and son in applications for permanent residence. Kwong repeatedly told the client he had filed permanent residence applications when he had not. Because Kwong misrepresented to the client that the applications had been submitted, the client believed his wife was eligible to apply for Medical Services Plan coverage, but she was not. As a result, when she gave birth in BC, the client and his wife had to pay for the hospital services.

In April 2015 Kwong was retained by a party to file an application for the BC Provincial Nominee Program, with a view to later applying for permanent residence. Kwong did not file the application. The program was suspended and then relaunched with requirements that the client did not meet. Kwong told or implied to the client that the application had been sent when it had not. Kwong sent a fabricated email to the client, which he represented was confirmation of receipt of the filed application.

In June 2013 Kwong was retained to assist a party in obtaining a work permit. The retainer agreement provided for payments in instalments upon completion of certain phases of the work. Kwong issued accounts and transferred funds from trust to satisfy the accounts, knowing that the related milestones had not been met. Kwong repeatedly told the client that applications had been submitted when they had not. When a subsequently filed application was rejected, Kwong failed to tell the client and continued to represent that his application was still under consideration.

In December 2014 a couple retained Kwong with regard to the man sponsoring his wife as a permanent resident of Canada. As provided for in the retainer, Kwong issued an account shortly after starting work on the file, and funds to satisfy the account were transferred from the retainer held in trust, but Kwong never sent a copy of this account to the clients. In March 2015 Kwong issued an invoice, as provided for in the retainer "just prior to submission of the application." Between May 2015 and March 2016, Kwong repeatedly represented that he had filed the application when he had not. In March 2016, Kwong and his firm advised the husband that Kwong had failed to file the application.

ADMISSION AND DISCIPLINARY ACTION

Kwong admitted that he:

- in six instances, made misrepresentations to a client or clients regarding the status of an application by making statements that he knew or ought to have known were false or by failing to disclose information;
- in six instances, failed to provide a client or clients with the quality of service that is expected of a competent lawyer in a similar situation;
- in four instances, withdrew or authorized the withdrawal of trust funds in payment of fees without first delivering a bill to a client or clients;
- in two instances, falsified documents and provided them to a client or clients in order to misrepresent that he had submitted the application;
- acted without his client's instructions; and
- improperly withdrew client trust funds held on behalf of a client or clients to satisfy his account, purportedly to pay fees or disbursements, when he was not entitled to the funds.

In resolving the citation, the Law Society required Kwong to acknowledge that he had ceased to be a member of the Law Society in the face of disciplinary proceedings and to provide an undertaking:

- not to engage in the practice of law with or without the expectation of a fee, gain or reward, whether direct or indirect, until such time as he may again become a member in good standing of the Law Society;
- not to apply for readmission to the Law Society of British Columbia or elsewhere within Canada prior to April 6, 2020;
- not to apply for membership in any other law society (or like governing body regulating the practice of law) prior to April 6, 2020, without first advising in writing the Law Society of British Columbia; and
- not to permit his name to appear on the letterhead of, or work in any capacity whatsoever, for any lawyer or law firm in British Columbia, without obtaining the prior written consent of the Discipline Committee of the Law Society unless he again becomes a member in good standing (subject to the express consent of the Discipline Committee to work in the capacity of a "workers' advisor" for the Ministry of Labour).

RONALD WAYNE PERRICK

North Vancouver, BC
Called to the bar: May 17, 1971

Citation issued: December 20, 2012

Review date: August 11, 2015 and April 12, 2017
Benchers: Nancy G. Merrill, QC, Chair, Pinder K. Cheema, QC, Sharon Matthews, QC, Elizabeth Rowbotham and Tony Wilson, QC
Decision issued: February 15, 2018 (2018 LSBC 07)
Counsel: Alison Kirby for the Law Society; Ronald Wayne Perrick on his own behalf

BACKGROUND

In the course of this hearing, the Law Society applied to the hearing panel for an order prohibiting Ronald Wayne Perrick from re-litigating matters that had already been litigated before Madam Justice Marion J. Allan, based on the legal doctrine of abuse of process.

On October 21, 2013, the hearing panel granted the Law Society's application, and the findings made by Madam Justice Allan were accepted into evidence. On January 23, 2014 the hearing panel found that Perrick had committed professional misconduct, and on April 25, 2014 ordered that he pay a fine in the amount of $25,000 and costs of $24,210 (facts and determination: 2014 LSBC 03; disciplinary action: 2014 LSBC 25; discipline digest: Fall 2014 *Benchers' Bulletin*).

Perrick's application for review sought a dismissal of the order that he be prohibited from re-litigating the matters before Madam Justice Allan, a dismissal of the panel's findings of facts and determination and disciplinary action, and a dismissal of the citation or, in the alternative, a new hearing admitting new evidence.

DECISION OF THE BENCHERS ON REVIEW

The Benchers on review found that the hearing panel had jurisdiction to apply the abuse of process doctrine and made no error in its decision on that application.

Perrick sought to introduce new evidence on the review. The Benchers found that the proposed evidence did not meet the test for admission of evidence on a review, which requires that the evidence was unavailable at the time of the original hearing, relevant to the allegations in question, credible and capable of affecting the result of the review.

In the review hearing, Perrick raised issues that were not included in his notice of review. The Benchers were of the view that the review should be decided based on the issues raised in the notice of review and declined to entertain submissions on issues not raised in the notice of review.

Because the notice of review alleged no errors, beyond the abuse of process issue, pertaining to the decision on facts and determination or the decision on disciplinary action, the Benchers confirmed those decisions.

Perrick has appealed the decision of the Benchers on review to the Court of Appeal.

Citation issued: October 8, 2013

Court of Appeal: February 15, 2018 (Saunders, Goepel and Fenlon, JJA)
Written reasons: May 2, 2018 (2018 BCCA 169)
Counsel: A.R. Westmacott, QC and G. McLennan for the Law Society; Ronald Wayne Perrick appearing in person

BACKGROUND

In its decision on September 8, 2015, a hearing panel accepted Ronald Wayne Perrick's admission of professional misconduct in his failure to serve his client in a conscientious, diligent and efficient manner and his failure to reply promptly to correspondence from opposing counsel. The panel also found a fundamental failure to provide any meaningful service to his client.

The panel considered Perrick's previous discipline record in ordering that he be suspended for 30 days and pay costs of $19,315.81 (facts and determination: 2014 LSBC 39; disciplinary action: 2015 LSBC 42; discipline digest: Winter 2015 *Benchers' Bulletin*).

Perrick sought a review of the hearing panel's decisions on several grounds, including that the hearing panel erred in its decision on disciplinary action when it took into consideration his professional conduct record. He submitted that a previous discipline hearing should not have been considered as he had filed for a review of that matter and the review had not yet been decided.

A review board dismissed the application for review and confirmed the decisions of the hearing panel (2016 LSBC 43; discipline digest: Spring 2017 *Benchers' Bulletin*).

Perrick appealed the decision of the review board to the Court of Appeal.

COURT OF APPEAL DECISION

The Court of Appeal dismissed the appeal. The court found that the review board reasonably concluded the pending review of a misconduct finding does not render the finding irrelevant for the purpose of determining subsequent disciplinary action.

SUMIT AHUJA

Vancouver, BC
Called to the bar: April 15, 2011
Discipline hearing: September 6, 2017
Panel: Herman Van Ommen, QC, Chair, Dennis J. Day and Gillian M. Dougans
Decision issued: October 31, 2017 (2017 LSBC 39)
Counsel: Carolyn Gulabsingh for the Law Society; Henry Wood, QC for Sumit Ahuja

FACTS AND DETERMINATION

Sumit Ahuja was retained by his client to provide services for a family matter. His client's husband had already scheduled a summary trial application seeking a divorce, joint parenting responsibility, child support, a reduction of retroactive child support owed and a division of family assets. Approximately two weeks before the trial, Ahuja called opposing counsel and asked for an adjournment. Opposing counsel refused.

Opposing counsel sent an email a few days before the scheduled trial to ask if Ahuja's client agreed to the divorce order to be made on the trial date. Ahuja emailed his client and informed her that her husband wished to proceed with the divorce but the judge may not grant it. Ahuja's client

asked him to do everything he could to stop the divorce on the trial date.

Ahuja emailed opposing counsel stating that he wished to adjourn the summary trial and opposing counsel could proceed with the application for divorce. He said his client would not oppose the divorce order. Ahuja did not attend the summary trial. The judge granted the divorce order and adjourned the remaining issues.

Ahuja advised his client that she could appeal the divorce order but he did not think the appeal had any merit. His client filed a complaint with the Law Society.

When contacted by the Law Society, Ahuja said he knew he would not be available for the hearing and advised his client of this, but he did not have notes of this discussion. He said his client agreed to keep the trial date because another lawyer would take over the file when she returned from maternity leave, but when she returned, she advised Ahuja she would not take over the file.

The hearing panel found that Ahuja failed to advise his client he would not attend the trial, failed to follow his client's clear instructions to oppose the application for a divorce order and instead advised opposing counsel his client did not oppose, and failed to tell his client of his failure to attend court or of his advice to opposing counsel that she did not oppose the divorce. The panel found Ahuja committed professional misconduct.

DISCIPLINARY ACTION

The panel considered Ahuja's professional conduct record, which showed challenges in client communication and integrity. It was concerned with Ahuja's lack of candour in the matter and determined his conduct to be more serious than a quality of service issue. The panel also considered the impact on his client, his acknowledgement of the misconduct and remedial steps taken, and sanctions in similar cases.

The panel ordered that Ahuja:

1. be suspended for one month; and
2. pay costs of $5,851.43.

APPLICATION TO AMEND DECISION

Ahuja applied to amend the hearing panel's written decision, claiming that paragraphs 55 and 66 made findings that were critical of his integrity and were unfair.

The original citation was issued on November 9, 2016. It was amended after negotiation and agreement by both parties, and the Law Society removed the allegations of integrity offences.

Ahuja said the panel was precluded from making findings about his integrity due to the agreement to remove the integrity allegations. The Law Society's position was that the removal of integrity allegations from the citation did not mean all integrity concerns had been removed.

The panel found the agreement to remove allegations from the original citation did not prevent the panel from commenting on Ahuja's integrity, credibility or lack of candour. It also determined the hearing panel was *functus officio*, and to hold otherwise would be to invite the parties to review a draft and make submissions before a final version of the decision was released to the public. That is not a process available to the parties.

The panel dismissed the application (2018 LSBC 08).

THOMAS PAUL HARDING

Surrey, BC
Called to the bar: August 31, 1990
Discipline hearing: January 10, 2018
Panel: Shona Moore, QC, Chair, Dan Goodleaf and Lisa J. Hamilton, QC
Decision issued: March 13, 2018 (2018 LSBC 09)
Counsel: Robin N. McFee, QC and Jessie I. Meikle-Kahs for the Law Society; Gerald A. Cuttler, QC for Thomas Paul Harding

BACKGROUND

In June 2012, Thomas Paul Harding got into a dispute with an employee at an automobile towing facility. He moved his car to block access to the storage area, called the police and said he needed "someone there to talk to these idiots because otherwise you'll have to send a police officer probably to arrest me because I'm going to go get a crowbar and smash up the place."

On June 27, 2014, a hearing panel found that none of Harding's interactions with the employee or with the police dispatcher constituted professional misconduct (2014 LSBC 29; discipline digest: Fall 2014 *Benchers' Bulletin*).

The Discipline Committee sought a review of the hearing panel decision, and on October 20, 2015, a review board reversed the hearing panel's decision and found that Harding had committed professional misconduct (2015 LSBC 45; discipline digest: Summer 2016 *Benchers' Bulletin*).

Harding appealed the review board decision to the Court of Appeal, and on May 2, 2017 the court dismissed Harding's appeal (2017 BCCA 171).

DISCIPLINARY ACTION

A hearing was convened to determine the appropriate disciplinary action arising from the finding of professional misconduct by the review board and upheld by the Court of Appeal. Given the passage of time since the hearing on facts and determination in 2014, the hearing panel was reconstituted.

The hearing panel found that Harding had not intended his remark as a threat but as a means of persuading the police to attend to what was essentially a trivial dispute. It found the nature and gravity of that conduct to be an aggravating factor in determining the appropriate sanction.

The panel reviewed Harding's professional conduct record, which included four instances arising from incivility. However, he had taken appropriate steps to address his mood and anger issues.

The hearing panel considered that a significant consequence was required as a general deterrence to the profession and to ensure the public's confidence in the legal profession. The panel also reviewed penalties imposed in past discipline cases involving similar misconduct.

The hearing panel ordered that Harding:

1. be suspended for three weeks; and
2. pay costs of $4,744.79.

MALCOLM HASSAN ZORAIK

Called to the bar: November 16, 2001

Voluntary withdrawal of membership: February 2, 2015

Discipline hearing: July 27 and 28, 2017 and January 19, 2018

Panels: facts and determination: Sharon Matthews, QC, Chair, Satwinder Bains and Sandra Weafer; disciplinary action: Sandra Weafer, Chair, Satwinder Bains and Sharon Matthews, QC (Sharon Matthews, QC did not participate in the decision)

Decisions issued: September 26, 2017 (2017 LSBC 34) and April 20, 2018 (2018 LSBC 13)

Counsel: Jaia Rai for the Law Society; Russell S. Tretiak, QC for Malcolm Hassan Zoraik

FACTS

The Law Society was informed on July 20, 2009 that Malcolm Hassan Zoraik had been indicted on criminal charges. Zoraik was convicted of public mischief, obstruction of justice and fabrication of evidence on June 14, 2010, and on November 2, 2010 he was sentenced to a conditional sentence order of 18 months. An appeal to the BC Court of Appeal was dismissed on June 26, 2012.

On October 18, 2012, the Discipline Committee referred the matter to the Benchers pursuant to Rule 4-40 (now Rule 4-52), a seldom-used provision that allows for a summary process for suspension or disbarment of a lawyer if the lawyer is convicted of an indictable offence.

An oral hearing was held before nine Benchers on January 25, 2013, and on May 30, 2013 the Benchers ordered that Zoraik be disbarred (2013 LSBC 13; discipline digest: Fall 2013 *Benchers' Bulletin*).

Zoraik sought a review of that decision by the BC Court of Appeal, which determined in February 2015 that the matter should be referred back to the Benchers for a hearing (2015 BCCA 137; discipline digest: Fall 2015 *Benchers' Bulletin*).

Over the next 14 to 16 months there was a series of communications between counsel for the Law Society and Zoraik where questions of the proper process were raised, and on June 24, 2016 the Benchers returned the matter to the Discipline Committee to consider action pursuant to Rule 4-4. On September 29, 2016 the Discipline Committee directed that a citation be issued against Zoraik.

STAY APPLICATION

At the hearing, counsel for Zoraik argued that the discipline proceedings should be stayed or, alternatively, that the disciplinary action should be reduced as a result of excessive delay. As this was only the facts and determination stage of the proceedings, the hearing panel did not hear, and did not address, arguments with respect to disciplinary action.

Zoraik maintained that, in assessing whether there had been inordinate delay, the panel should use the test set out in the recent Supreme Court of Canada decision of *R. v. Jordan*, 2016 SCC 27. Since that case was a criminal law case decided under section 11(b) of the *Charter of Rights and Freedoms* and not an administrative law case under section 7, the panel determined that the test in *Blencoe v. British Columbia (Human Rights Commission)*, [2000] 2 SCR 307, applied and Zoraik needed to establish significant prejudice in order to obtain a stay for excessive delay.

While the comments in *Jordan* on unnecessary delay and a "culture of complacency" were relevant, the panel applied the *Blencoe* test, first considering the issue of delay and finding that the Law Society dealt with the matter appropriately from a time perspective.

The panel also found that there was very little direct evidence of prejudice to Zoraik and that the prejudice alleged fell far short of the type or magnitude required to grant a stay of proceedings. The application for a stay was dismissed.

DETERMINATION

The hearing panel determined that Zoraik's conduct was a marked departure from that expected of a lawyer and constituted professional misconduct.

DISCIPLINARY ACTION

In determining the appropriate disciplinary action, the panel considered the nature, gravity and consequences of Zoraik's conduct, his character and professional conduct record, his acknowledgement of the misconduct and remedial action, and the impact of his conduct on public confidence in the legal profession.

References described Zoraik as being of good character, but the panel considered that, by all accounts, he was of equally good character before committing forgery but committed the offence nevertheless. Despite Zoraik's apparently sincere desire to be a better person, the panel placed more significance on the gravity of the misconduct and the importance of maintaining public confidence in the legal profession and the disciplinary process. The panel concluded that this kind of offence against the administration of justice requires the most severe sanction.

The panel ordered that Zoraik be disbarred.

Zoraik has appealed the decision to the Court of Appeal.

BRIAN PETER GRANT KAMINSKI

Burnaby, BC

Called to the bar: May 14, 1993

Discipline hearing: September 12, 2017

Panel: Elizabeth Rowbotham, Chair, Carolynn Ryan and Donald A. Silversides, QC

Decision issued: May 1, 2018 (2018 LSBC 14)

Counsel: Alison Kirby for the Law Society; Robin N. McFee, QC and Jessie I. Miekle-Kahs for Brian Peter Grant Kaminski

FACTS

Between November 2012 and June 2014, Brian Peter Grant Kaminski received a total of approximately $33,000 from nine clients. He misappropriated those funds by depositing them into his personal law corporation's general account when they should have been deposited into either the general account or the trust account of the law firm where he practised, and he failed to account to the firm for those funds. He also misrepresented to the firm the amounts billed to, and received from, four of those clients.

ADMISSION AND DETERMINATION

Kaminski made a conditional admission of professional misconduct and proposed a disciplinary action of a three-month suspension. The

Discipline Committee accepted the admission and proposed action and directed discipline counsel to recommend them to the hearing panel for acceptance.

The hearing panel considered that diverting funds from a lawyer's partners and misappropriating client retainer funds is serious misconduct and is a breach of trust to a person or party to whom a duty of utmost honesty and loyalty is owed. The panel found that Kaminski's conduct was a marked departure from the standard that the Law Society expects of lawyers and constituted professional misconduct.

DISCIPLINARY ACTION

Majority decision (Rowbotham, Ryan)

The majority considered that, because Kaminski had not practised law since he gave an undertaking in 2014 not to practise law, a suspension of three months would result in an effective suspension of approximately four years. It took into account Kaminski's professional conduct record, including a conduct review and a prior admission of a disciplinary violation, which resulted in a fine. The panel also considered Kaminski's admission that he gained an advantage by diverting funds to his personal use, although the panel noted that he had compensated his former partners for the money he misappropriated.

The majority accepted the proposed disciplinary action and ordered that Kaminski be suspended for three months and pay costs of $2,551.

Dissenting decision (Silversides)

The minority agreed with the facts and evidence set out in the majority decision, but noted that, although Kaminski admitted to the misconduct, he stopped only when he was found out by other lawyers in his firm. Considering that misappropriating funds from clients or partners betrays the fundamental trust and honesty underlying the legal profession, the minority concluded that a three-month suspension is inadequate and rejected the proposed disciplinary action. ❖

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sought to place blame on the courier and registry. The client eventually informed the lawyer that she wished to terminate the lawyer's retainer. The lawyer refused to provide the client with her file on the basis that she had not paid his legal fees. The lawyer has since apologized to the client and assisted the client's new lawyer in dealing with the matter. He admitted he exercised very bad judgment and acknowledged the magnitude of his misconduct in lying to his client.

A conduct review subcommittee advised that the lawyer's conduct was inappropriate as the *BC Code* makes numerous references to a lawyer's duty to act honestly and with integrity at all times. The subcommittee emphasized that lying is never acceptable and reflects poorly on the profession. In this case, the lawyer's conduct was particularly inappropriate because he attempted to cast blame on others. The lawyer was warned that future dishonesty would have more serious consequences. The subcommittee emphasized that the lawyer should take on only matters he can competently handle. The lawyer now declines matters that he has not dealt with before and limits his area of practice. The subcommittee advised the lawyer to take full advantage of his mentors and practice resources offered by the Law Society. Accordingly, the lawyer now more often consults with his former principal and a Canadian Bar Association mentor. He is working on improving his office processes and record keeping. (CR 2018-24)

JURICERT AND LAND TITLE ACT ELECTRONIC FILING REQUIREMENTS

In two concurrent conduct reviews, a conduct review subcommittee discussed a lawyer's conduct in affixing her digital signature declaring that she had a certain conveyancing document in her possession when she did not, contrary to the Juricert Agreement, part 10.1 of the *Land Title Act* and rule 6.1-5 of the *Code of Professional Conduct for British Columbia*. In addition, her conduct fell short of the standard of a competent lawyer called for in rule 3.1-2 of the *BC Code*. In the second conduct review, the subcommittee discussed the lawyer's conduct in disclosing her Juricert password to her assistant and permitting her assistant to affix her digital signature on electronic instruments, contrary to the Juricert Agreement and rule 6.1-5 of the *BC Code*. While acting for the purchasers of a strata property, the lawyer electronically declared she had in her possession a certificate of payment under the *Strata Property Act*. Following a Land Title Office request to produce the certificate, the lawyer discovered she did not have and never had the document in her possession. The lawyer relied on her staff to obtain and assemble the necessary documents in the transaction and did not carefully check that the documentation was in order. Following a trust compliance audit, the lawyer admitted that she shared her Juricert password with a staff member and allowed that person to use the password repeatedly.

The subcommittee advised that the lawyer's conduct was inappropriate because the integrity of the land title and registry system and the electronic filing system require reliance on the declaration of lawyers. The subcommittee stressed that a lawyer's Juricert password is, in essence, that lawyer's signature. The lawyer acknowledged that she did not carefully verify the necessary documents and that she ought not to have relied on staff assurances before making her electronic declaration. She also admitted that she failed to properly supervise her staff. The lawyer stated that she understood the importance of protecting and not sharing her Juricert password.

The lawyer has taken concrete steps to prevent a recurrence of similar incidents in the future. She has created a new cover sheet for conveyance files requiring a person's initials for each document related to the transfer. The lawyer now personally verifies that she has every document in the file before signing off on the transaction. The lawyer takes her computer with her if she will be out of the office and has matters that need to close. She has also made arrangements with another lawyer who shares her office space to electronically sign documents when necessary. She has cancelled her old Juricert password and obtained a new one that she has not shared and will not share with anyone. She has explained to the Land Title Office staff why she needs a new Juricert password and has familiarized herself with the Juricert Agreement. She has committed to better supervision of her staff and to being more careful in carrying on her conveyancing practice. The subcommittee was concerned that these incidents showed a broad lack of understanding of a lawyer's professional obligations and recommended that the lawyer read the *BC Code* from time to time to address this deficit. (CR 2018-25 and CR 2018-26) ❖

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