The Law Society of British Columbia

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BENCHERS' BULLETIN

Keeping BC lawyers informed

Our national healing plan

by David Crossin, QC

SOMETHING EXTRAORDINARY HAS occurred. An Indigenous woman will lead a nation and reveal lightness and hope where there has been only darkness and indifference.

Our country is haunted by our Indigenous women that are gone. Missing. Murdered. Disappeared. Addicted, abused, exploited, vulnerable and, by most, forgotten.

The fact is, we all knew. Justice Murray Sinclair said it out loud:

> For over a century, the central goals of Canada's Aboriginal policy were to eliminate Aboriginal governments; ignore Aboriginal rights; terminate the Treaties; and, through a process of assimilation, cause Aboriginal peoples to cease to exist as distinct legal, social, cultural, religious and racial entities in Canada. The establishment and operation of residential schools were a central element of this policy, which can best be described as "cultural genocide."

There has been much collateral damage to our country and collective conscience. Women and girls are perhaps at the forefront. Exploring this horror and its causes is now, finally, a national moral imperative. A commission has been struck. Its mandate is broad:

> The Commission is directed to examine and report on the systemic causes behind the violence that Indigenous women and girls experience and their greater vulnerability to that violence by looking for patterns and underlying factors that explain why higher levels of violence occur.
>
> The Commission is also directed to examine and report on the impacts on policies and practices of government institutions. These include institutions such as policing, child welfare, coroners and other government policies/practices or social/economical conditions.

A British Columbia judge, the Honourable Judge Marion Buller, has been appointed to lead the National Inquiry Into Missing and Murdered Indigenous Women and Girls. There could not be a better choice.

She is a member of the Mistawasis First Nation in Saskatchewan. Judge Buller has been president of the Indigenous Bar Association in Canada and was the first Aboriginal woman judge in British Columbia. She has been a Provincial Court judge since 1994, and in 2006 Judge Buller established the First Nations Court in New Westminster. In 2013, with the assistance of Chief Judge Thomas Crabtree and the late Judge Josiah Wood, she expanded First Nations Court to Duncan, BC.

There has been much collateral damage to our country and collective conscience. Women and girls are perhaps at the forefront. Exploring this horror and its causes is now, finally, a national moral imperative.

In early 2016, the Law Society of BC formed a steering committee to assist the Law Society in formulating a mandate to address the calls to action outlined in the report of the Truth and Reconciliation Commission.

The Law Society was honoured to welcome many leaders of our Indigenous community in British Columbia as members of our steering committee. Judge Buller was part of that steering committee and spoke, with many others from the committee, at the Law Society retreat in June 2016. Those leaders, including Judge Buller, have inspired the Law Society to formulate a permanent Truth and Reconciliation

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.

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

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Advisory Committee that will be pursuing the array of justice issues arising from the commission's report.

As many of you know, an admission of criminal responsibility in First Nations Court mandates the participation of an accused person in a healing plan. It is an act of collaboration that seeks redemption, restoration and rehabilitation. A healing plan is often difficult because it demands painful self-evaluation in seeking understanding of the past behaviour and an understanding of how to move forward in hope.

Judge Buller and her fellow commissioners are about to embark upon an exploration of framing our national healing plan. She will need our hearts and our help. I offer that to her on behalf of the Bar of British Columbia.❖

CRA notices of requirements

THE SUMMER 2016 issue of the *Benchers' Bulletin* reported on the Supreme Court of Canada's decisions in *Canada (Attorney General)* v. *Chambre des Notaires du Quebec* 2016 SCC 20 and *Minister of National Revenue* v. *Thompson* 2016 SCC 21. As a result of the court's decisions, ss. 231.2 and 231.7 of the *Income Tax Act* are unconstitutional and inapplicable to lawyers and Quebec notaries in their capacity as legal advisors, and the exception in the definition of solicitor-client privilege in s. 232(1) of that Act is constitutionally invalid.

The Law Society has now received confirmation that the Canada Revenue Agency will not be issuing requirements or compliance orders to lawyers or notaries for information related to their clients where that information is held in their capacity as legal advisors.

If any questions arise from existing notices of requirements or applications for compliance orders, contact Barbara Buchanan (bbuchanan@lsbc.org) or Michael Lucas (mlucas@lsbc.org) at the Law Society.❖

2016 Law Society scholarship

Congratulations to **Sarah Pike**, winner of the $12,000 Law Society scholarship for graduate legal studies.

Pike was called to the BC Bar in 1995, practising with Davis & Company until 2002 and then with Hunter Voith until 2003. Since 2003, she has practised as legal counsel for the Department of Justice, working for Aboriginal Litigation Services at the BC regional office and Indigenous and Northern Affairs Canada's Legal Services Unit.

Pike is pursuing studies in the University of British Columbia's Master of Laws program for the 2016-2017 academic year. Her proposed thesis is a biography of Gilbert Malcolm Sproat (1834-1913) and an analysis of his land policies as Indian Reserve Commissioner in BC from 1876 to 1880. Pike will be examining Sproat's minutes and decisions, as well as his letters and other writings.

"Reconciling the pre-existence of Aboriginal societies, Crown sovereignty, and the lack of historic land cession treaties in British Columbia, in my view, is one of the most compelling conundrums facing our province today," Pike stated. "Gilbert Sproat may be able to assist us with ideas of both what to do and what not to do as we continue with this reconciliation."❖

Sarah Pike and President David Crossin, QC

Photo: Ron Sangha Productions Ltd.

Promoting equity and diversity

by Timothy E. McGee, QC

THE LAW SOCIETY values the principles of equity and diversity and continues to work on initiatives for the advancement of women, minorities and Indigenous people in the legal profession as part of its 2015-2017 strategic plan. This issue of the *Benchers' Bulletin* features interviews with two extraordinary individuals in the profession, both from diverse backgrounds that have helped inform and shape their careers in law.

You will read about Michelle Stanford, the first black woman elected as a Bencher of the Law Society. Called to the Bar in 1993, she has built an impressive legal career in criminal defence and administrative law. Michelle speaks about what inspired her to make the switch from working as a head nurse at Vancouver General Hospital to embarking on a career in law. She shares with us the progress toward diversity she has seen in the profession.

You will also hear from the Honourable Judge Len Marchand Jr., who has a wealth of experience and knowledge in working with residential school survivors. After 18 years of practising law, Len was appointed to the Bench in September 2013 and currently sits on the Provincial Court in Kamloops. He shares his thoughts on how First Nations Court is making a difference in communities and how a non-adversarial approach in dealing with Indigenous offenders provides greater opportunity for success, from the perspective of both the individual and the community. We are pleased to have Len as a member of the Law Society's Truth and Reconciliation Advisory Committee.

Current research shows the best way to promote diversity and cultural competency is inclusive engagement with staff and management and facilitating contact with people from different backgrounds.

In his interview, Len speaks to the importance of the Truth and Reconciliation Commission's recommendation for lawyers to receive appropriate cultural competency training, including the history and legacy of residential schools, treaties and Aboriginal rights, Indigenous laws and Aboriginal-Crown relations. This includes skills-based training in intercultural competency, conflict resolution, human rights and anti-racism.

At the Law Society, we are planning a renewed program of cultural competency for our staff. A recent article in the *Harvard Business Review* entitled "Why Diversity Programs Fail" brought to light some of the traditional diversity strategies that simply don't work, such as focusing on negative messages about past failures. Current research shows the best way to promote diversity and cultural competency is inclusive engagement with staff and management and facilitating contact with people from different backgrounds. These are great points to consider as we plan our cultural competency initiatives.

Our Equity and Diversity Advisory Committee continues to develop its outreach strategies to engage lawyers and law firms. It has done wonderful work in the area of Justicia in BC, and I encourage members to take a look at the best practice guides and model policies that the Law Society has developed. Materials can be found on our website.

I welcome your comments and feedback. Please feel free to contact us at communications@lsbc.org.❖

FROM THE ETHICS COMMITTEE

Consultation on "incriminating physical evidence" rules

THE ETHICS COMMITTEE is seeking feedback from Law Society members and other interested persons about *Code of Professional Conduct for British Columbia* provisions regulating the handling of incriminating physical evidence. Similar rules have been adopted by most Canadian law societies and are included in the Federation of Law Societies' Model Code of Professional Conduct.

Interested persons may review the consultation materials on the Law Society's website and are encouraged to provide comments before the rules are recommended to the Benchers for adoption.❖

LAW SOCIETY FALL CALENDAR

October 14	**Annual general meeting** – see the Notice to the Profession
November 15	**Vancouver Bencher by-election**
November 17	**Bench & Bar Dinner**



Photos: left by Ron Sangha Productions Ltd.; centre and right submitted by TRU and UVic, respectively

GOLD MEDAL PRESENTATIONS

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

In 2016, gold medals were presented to Connor Bildfell of UBC (left photo, with Dean Catherine Dauvergne and Law Society First Vice-President Herman Van Ommen, QC), Cole Rodocker of TRU (centre photo, with Chancellor Hon. Wally Oppal, QC) and Wesley Hartman of UVic (right photo, with Dean Jeremy Webber and Bencher Dean Lawton).

Second annual secondary school essay contest highlights significance of the rule of law

THE LAW SOCIETY'S Rule of Law and Lawyer Independence Advisory Committee launched an annual essay contest for BC secondary students last year to reaffirm the significance of the rule of law and to enhance students' knowledge and willingness to participate actively in civic life.

For the 2016-2017 school year, the Law Society is inviting all Grade 12 students and any secondary school students who have taken, or are currently enrolled in, either Law 12 or Civic Studies 11 to submit an essay on the following topic:

> **How would you explain the rule of law to a fellow student who has never heard the term before? You might discuss why the rule of law is important, and how it impacts our daily lives. You might also discuss any current events involving threats to the rule of law.**

Students are expected to submit an essay addressing the topic that demonstrates their understanding of the rule of law, its principles and its significance in civil society. Entries will be judged on a clear expression of ideas, an understanding of the topic, originality and excellence in writing.

The winner and runner-up will be chosen by a judging panel representing the Law Society and the education community. The winning entry will be awarded a $1,000 prize, and the runner-up will receive a $500 prize. The winner and runner-up will be invited to an awards presentation event at the Law Society in Vancouver. Travel and accommodation costs for a student not living in Metro Vancouver will be provided by the Law Society.

Deadline for submissions is **April 10, 2017**.

For further details, see the highlight on the Law Society website.❖

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 May 18 to August 5, 2016, the Law Society did not obtain any undertakings from individuals or businesses not to engage in the practice of law.

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

Nashamen Ramzan

Nashamen Ramzan, of Richmond, consented to an injunction prohibiting her from engaging in the practice of law, representing herself as a lawyer or otherwise qualified to practise law, and from commencing, prosecuting or defending proceedings in any court on behalf of others. The Law Society alleged that Ramzan had drafted various documents for a fee relating to an immigration matter. Further, the Law Society alleged that Ramzan charged a fee to commence and prosecute a family law proceeding and held herself out as a legal representative while doing so. Ramzan agreed to pay $3,500 in restitution and $1,500 representing the Law Society's costs. (June 2, 2016)

Charles Bryfogle

On July 15, 2016, Associate Chief Justice Austin Cullen found Charles Bryfogle, of Kamloops, in contempt of various court orders and sentenced him to a conditional sentence order of one year followed by a year of probation. Included in the conditions of the sentence, Bryfogle is required to serve three months of house arrest, must undergo a mental health assessment and follow the proposed treatment, and must not involve himself in the legal matters of members of the Tsilhqot'in Nation. Bryfogle must not enter any courthouse or file any documents during his sentence or probation, except in specific circumstances, including if the documents are signed by a lawyer.

Ronald William Kostyk

On August 4, 2016, Mr. Justice George Macintosh found Ronald William Kostyk, of Surrey, in contempt of two court orders for representing himself as qualified or entitled to engage in the practice of law, failing to inform members of the public and administrative tribunals that he was not a lawyer, and failing to make restitution payments as previously ordered. The court sentenced Kostyk to 21 days of incarceration, which is to be suspended for three years and only served if Kostyk further breaches various court orders. Kostyk must complete 50 hours of community service within a year and must make monthly restitution and cost payments.❖

In brief

QC NOMINATIONS

The Attorney General is now accepting nominations for Queen's Counsel. The nomination process will end on September 23, 2016.

More information, including the online application form and a consent form, is available on the Ministry of Justice website at www.ag.gov.bc.ca/queens-counsel.

Appointments are announced at the end of the year.

JUDICIAL APPOINTMENTS

Judge Marguerite H. Church, of the Provincial Court in Williams Lake, was appointed a justice of the Supreme Court of BC in Prince George to replace **Mr. Justice J.W. Williams**, who was transferred to Vancouver.

Maria Morellato, QC was appointed a justice of the Supreme Court of BC in Vancouver to replace **Madam Justice L.A. Fenlon**, who was elevated to the Court of Appeal. Madam Justice Morellato was a Bencher for Vancouver County from 2012 until her appointment to the Bench.

Jennifer Barrett was appointed a judge of the Provincial Court in Victoria.

Robert Gunnell was appointed a judge of the Provincial Court in Chilliwack.

Robin P. McQuillan was appointed a judge of the Provincial Court, and will initially be assigned sitting duties out of the Office of the Chief Judge.

Karen L. Whonnock, QC was appointed a judge of the Provincial Court in Williams Lake.❖

Photo: Ron Sangha Productions Ltd.

50- AND 60-YEAR CERTIFICATES

The Law Society hosted a luncheon in Vancouver on June 23, 2016, to honour lawyers who are celebrating milestone anniversaries in the profession.

Receiving 50-year certificates unless otherwise noted, were, front row, left to right: R. John Meyer, Shirley E. Giroday (60 years), William J. Worrall, QC (60 years), Nisson M. Goldman (60 years), John K. Dungate, Donald A. Farquhar, QC and Rex D. Blane.

Back row, left to right: Peter W. Brown, Ian G. McKenzie, Mitchell H. Gropper, QC, Donald H. Risk, QC, Derek T. Hopkins, Tsang Wing Wai, Robert C. Gardner, QC, Kenneth J. Yule, QC, Kenneth J. Smith and George R. Brazier.

Also honoured this year, but not pictured: William S. Berardino, QC, David C.T. Davenport (60 years), William H. Davies, QC (60 years), Peter U.W. Ewert, QC, Brian C. Irwin, Brig. Gen. Frank Karwandy, QC (60 years), Henry T. Kennedy, Roy A. Logie (60 years), Warren J.A. Mitchell, QC, Michael J. O'Keefe, QC, Edward St. John Pollard, Vincent P. Reilly, QC, Bruce W.J. Rieck, Richard J. Scardina, Peter H. Stafford, QC and Sam Zalkow.

THE LAW FOUNDATION OF BRITISH COLUMBIA

FROM THE LAW FOUNDATION OF BC

Bank of Montreal

LAW FOUNDATION CHAIR Warren Milman commends Bank of Montreal for its commitment to paying a competitive rate of return on lawyers' pooled trust accounts. During these unprecedented times, recognizing the overall impact of protracted low interest rates on the Law Foundation's revenues, Bank of Montreal agreed to a new interest rate agreement.

Thanks go to Lauren Wilson, Vice President Commercial Banking; Pardeep Dosanjh, Commercial Account Manager; Paul Seipp, Regional Vice President Commercial Banking; and Michael E. Bonner, Senior Vice President, British Columbia & Yukon, Bank of Montreal, for their leadership in making this new agreement possible.

Increased revenues enable the Law Foundation to fund programs that make the justice system accessible to the people of British Columbia. The funded programs include professional legal education, public legal education, law reform, legal research, legal aid and law libraries.

The Law Society, the Canadian Bar Association, BC Branch and the Law Foundation encourage lawyers to consider which financial institutions provide the best support to the Law Foundation when deciding where to place their trust accounts.❖

Honourable Judge Len Marchand Jr.

Photo: Kelly Funk Photography

A conversation on reconciliation with the Honourable Judge Len Marchand Jr.

JUDGE LEN MARCHAND Jr., like his father, has been a tireless champion of Indigenous people and communities in BC. His father, the late Honourable Len Marchand Sr., made it his life's work to improve the lives of Indigenous people. As the first status Indian to be elected as a Member of Parliament and appointed to the federal cabinet, Marchand Sr. was a true trailblazer and role model.

Growing up as a member of the Okanagan Indian Band, Marchand credits the support and encouragement of his family for his ability to achieve his career goals. After finishing a bachelor of applied science in chemical engineering at the University of British Columbia in 1986, Marchand worked in the oil industry for five years. He returned to school to study law at the University of Victoria in 1991 and was called to the Bar in 1995. As a civil litigator, he focused on historic child abuse claims in institutional settings and represented residential school survivors.

In 2005, Marchand helped negotiate and was a signatory to the Indian Residential Schools Settlement Agreement, the largest class action settlement in Canadian history. He also served on the Oversight Committee for the Independent Assessment Process, a claimant-centred and neutral adjudication process that provides former residential school students with a way to settle their claims out of court. Marchand was appointed to the bench of the Provincial Court on September 3, 2013. He currently sits in Kamloops and presides at First Nations Court as part of a regular rotation with other local judges.

In August 2016, Marchand was

continued on page 10

Michelle Stanford

Photo: Kelly Funk Photography

Bencher Michelle Stanford: Giving a voice to the under-represented

AS IF ONE remarkable career wasn't enough, law is in fact Michelle Stanford's second profession. The Bencher representing Kamloops district has a distinguished career in criminal law, but began her professional life as a registered nurse.

For those who know Stanford, the dual career path is no surprise. "Throughout everything she does for clients and for the people of Kamloops, it's about caring," says Life Bencher Ken Walker, QC, who has had the opportunity to observe Stanford at work, both as a lawyer and in the Kamloops community, for nearly 20 years. "We're so fortunate to have someone like Michelle," he says, referring to her election as a Bencher last November.

Stanford is also the first female Bencher elected in Kamloops district and the first black female Bencher in BC. "That was not the agenda I ran on," she hastens to point out, adding that, nevertheless, race and gender did not prove barriers to becoming a Bencher of the Law Society.

That's not to say, however, that Stanford sees equal access across the profession, particularly when it comes to women. "There's still an inequity, and the Law Society is addressing it, so I'm encouraged. But the fact is that it still exists." Stanford says she's "astounded" that, although 50 per cent or more of the province's law school graduates are women, they account for only 38 per cent of practising lawyers in BC.

Although she has not encountered any overt barriers in her own career, Stanford cautions that doesn't mean barriers don't exist. "I have to say that I'm not aware of any conscious bias," she says, "but it may

continued on page 11

Feature – Judge Len Marchand … from page 8

appointed to the Law Society's Truth and Reconciliation Advisory Committee. The committee is charged with guiding the Law Society's response to the Truth and Reconciliation Commission's calls to action. The *Benchers' Bulletin* had the opportunity to chat with Marchand and hear his thoughts on how the legal profession and the justice system can move toward reconciliation.

What are your thoughts on the significance of the TRC's calls to action to the legal profession?

They're central. Over the years, I've witnessed as a lawyer and a judge how our current adversarial processes frighten, bewilder and hurt many Indigenous Canadians. I believe that less adversarial and more restorative approaches would be more helpful to individuals who are struggling, often as a result of the legacy of residential schools or other colonial policies. A more restorative approach would be good for those individuals, their families and their communities. And that would be good for our broader Canadian society.

What does this restorative approach look like?

One great example is the First Nations Court model that we have in various locations across the province, including in my community of Kamloops. Each one is tailored to meet the needs of its community. Offenders who come in are prepared to enter a guilty plea and take responsibility for their actions. The sentencing hearings are conducted in a way that allows for the full participation of the offender, supporters of the offender, a council of elders, community members, service providers and victims if they choose to participate. We are looking for sentences that will help address the underlying issues that have brought the offender before the court.

One of the key elements that we are implementing is to attach a healing plan to a probation order in virtually every case. The probation term states that the offender will make his or her best efforts to comply with the terms of the healing plan, which sets out a number of specific steps that the offender will take to promote his or her wellness and contribute to the community. Once a sentence is imposed, offenders come back for reviews, so we are able to track their progress toward completing the healing plan they have committed to and encourage them along their path.

How is First Nations Court working so far?

It's a very effective tool. I can give you an example of a case involving an elder in a local community who had attended residential school. He was a highly respected person, but he had a problem with alcohol. He committed a serious assault against his best friend — they were both drinking and a knife was involved. The Crown's position on sentencing was for him to serve a significant custodial sentence which, looking strictly at the offence, was an appropriate position for the Crown to take.

This elder came forward in First Nations Court. He had the support of the victim, his chief and his community. The proposal was for him to serve a sentence in his community and to make amends by leading a sober life and working with youth. This meant that the youth in his community would benefit from his traditional knowledge and skills.

With input from all stakeholders and the elders, I imposed the community sentence and, later, sat on the initial review. Things were going very well. The elder was happy to inform me of all the progress he had made on his healing plan. The reports from the community were very good.

Had the community not stepped forward and had the elders not been there, it's hard to say what the sentence would have been. In all likelihood, after a regular sentencing hearing, chances are that he would have been serving a significant custodial sentence.

I believe the assault was a low point that inspired a big change in the elder. In my work with residential school survivors, I saw people make big changes all the time, including late in life. All indications are that First Nations Court has made a difference for this offender, his family and his community.

What are other ways our justice system can work to better serve Indigenous people and communities?

Many Indigenous parties that we see in court have suffered trauma in their lives and there is no need to re-victimize these parties through, for example, an aggressive cross-examination. Usually the truth is self-evident or can be uncovered in a respectful way. Aggressive cross-examination techniques should be a last resort and used only if really necessary. People have been deeply hurt. Even lawyers with the very best of intentions can ask questions in a way that's hurtful when they don't need to.

Sometimes the adversarial process is the best process, but there are other areas where I believe we can move to a non-adversarial, restorative type of process. When we created the Independent Assessment Process [as part of the Indian Residential Schools Settlement Agreement], we used an inquisitorial model. The adjudicators made the inquiries and the way the inquiries were made — in that non-adversarial context — was quite a bit different and quite a bit better than how it had been in litigation.

I could see a non-adversarial model being applied in child protection cases and in many types of family law cases. That would require the judge to be more actively involved or even taking the lead in gathering information from the witnesses, with input from counsel. Counsel would still have a very active role in preparing their clients and ensuring the right information is put forward to the decision-maker.

What steps can lawyers take to become culturally competent?

For lawyers working with Indigenous clients, what they need to do is to really get to know their client, his or her community and the local resources. In the criminal context, counsel need to understand the *Gladue* and *Ipeelee* line of cases. They need to provide information to assist the judge in understanding why their client is in this predicament. Do they have a reduced level of moral responsibility for their conduct? What alternatives are available to incarceration that will help this person be better and keep the community safe? Lots of counsel do this work, but I feel that, quite often due to time constraints and other pressures, I'm not getting this critical information. And I should.

Do you think attaining higher Indigenous representation in the legal profession is

important to reconciliation? And if so, how can we achieve that?

I think it's a foundational piece to have a profession and judiciary that reflect the makeup of society, not just from the perspective of Aboriginal Canadians, but from the perspective of Canadians of all backgrounds. It gives people comfort and confidence in the judicial process, and that's critical to having a free and functioning society.

From the perspective of Aboriginal Canadians, something that my father used to always say is, "Education is the key to the future." That starts with kids. It starts with making sure kids come to school and they're ready to learn. They're living in a safe environment. They're fed. They're loved and cared for. That requires resources in communities to help support families that are struggling. Then kids can reach their full potential and all options are open to them. Not only do we need more Aboriginal lawyers and judges, but we also need more Aboriginal doctors, engineers, welders, loggers and so on. Education is key to providing opportunity to Aboriginal kids.

From the perspective of the legal profession, in my view, the profession needs to do a better job of hiring and supporting Aboriginal lawyers. Though there may be some extra effort at the outset, having a more diverse profession will pay dividends in the long run by allowing the profession to better meet its duties to our society.

Do you see a role for the Law Society in achieving reconciliation?

Absolutely. First of all, there's the specific recommendations in the TRC report directed to the law societies to ensure that lawyers get cultural competency training, including on the history and legacy of residential schools, treaties and Aboriginal rights, Aboriginal-Crown relations and so on. The Law Society can assist in providing skills-based training to lawyers in intercultural competency, conflict resolution, human rights and anti-racism.

Many calls to action include legislative reforms, in areas such as Aboriginal child welfare, Aboriginal education, Aboriginal title claims and Aboriginal justice systems. These legislative changes are important for the success of reconciliation. The Law Society has a critical role in demonstrating its support for legislative changes and ensuring lawyers in BC fully understand the extent and implications of these changes.❖

Feature – Michelle Stanford ... from page 9

be an issue of unconscious bias that I was unaware of, where I might have been overlooked and someone else of equal calibre was selected."

Speaking from her own experience, Stanford describes role models as playing an important part in overcoming barriers. She recounts an experience from her undergraduate days that left a lasting impression: "I happened to date a fellow whose mother was a lawyer. I don't have any lawyers in my family, but when I saw her as a single mother who was raising four children, that woman in that role flagged to me that law was something that I could do."

At the time, Stanford was gravitating toward sciences, and on her own mother's advice she completed a degree in nursing. "I was having a bit too much fun in college at the time and was a little bit unfocused," she explains with a laugh. "She suggested that nursing was a path I could achieve in a short time frame, and a career I could take anywhere in the world."

Several years later, Stanford was a head nurse at Vancouver General Hospital when she began having second thoughts about her first career choice. Thinking back to the role model she had encountered in her early university days, she decided to apply to Dalhousie law school and was accepted.

Stanford would complete her law degree at the University of Victoria and practise in Vancouver for a year before moving to Kamloops, where she has run a sole practice since 1996.

A big part of her practice has involved representing clients with mental health or addiction issues. Some of those clients have fallen under the jurisdiction of the BC Review Board, which holds hearings to make and review dispositions where individuals charged with criminal offences have been deemed not criminally responsible or unfit to stand trial on account of mental disorder. Other clients have had mental health or addiction issues, but not to the extent of being diagnosed with a mental disorder.

Stanford is drawn to those clients because "they are definitely a demographic that requires a lot of patience and a voice, particularly when in conflict with the law."

Today, Stanford is unquestionably a role model in her own right. In addition to distinguishing herself in criminal law, she has consistently contributed to both the profession and the community. She is currently a member of the Law Society's Practice Standards Committee and Equity and Diversity Advisory Committee. In recent years Stanford has served as president of the Kamloops Bar Association and as a member of the Legal Aid Action Committee of the Trial Lawyers Association of BC. Her community work has included serving as president of the Kamloops Art Gallery and on the boards of the Western Canada Theatre Company and the Thompson Health Region.

While she has cut back her volunteer work to focus on her Bencher duties, Stanford continues to volunteer with the Thompson Rivers University law student mentor program, the Canadian Bar Association's Women Lawyers Forum mentoring program and Access Pro Bono.

Her passion for the profession does indeed come down to caring, and for Stanford caring means ensuring that the disadvantaged and under-represented have a voice in the administration of justice, and ensuring equal access to a profession that represents the diversity of Canadian society.

While acknowledging the work that remains to be done, Stanford is clearly excited by the potential to make a difference as a Bencher. "As a new Bencher, I'm thrilled that the Law Society is focusing on equity and diversity. I'm encouraged by the passion around the table, by the insights and the passion to keep it moving forward."❖

PRACTICE ADVICE

Scams against lawyers – What are they and what can you do about them?

by Barbara Buchanan, QC, Practice Advisor

THERE ARE MANY scams against BC lawyers and law firms, including the common ones listed below. The starting point to protect yourself against such fraud is to be aware of the prevalent scams. Next, take steps to manage the risk.

COMMON SCAMS AGAINST LAWYERS

The "bad cheque scam"

There is no question that the most common scam against BC lawyers continues to be the "bad cheque scam" (may be a counterfeit or altered cheque, certified cheque, bank draft, US cashier's cheque or money order). Typically, the scammer poses as a lawyer's new client; however, the scammer may also pose as another lawyer, even using the name of a real lawyer or law firm who has no knowledge of the scam. There are usually at least two people working together to create a convincing scenario (e.g., debtor/creditor, purchaser/seller, husband/wife). Fake websites are sometimes used (may copy legitimate websites) as well as fake phone trees for businesses (e.g., press 1 for accounting, press 2 for human resources, etc.).

The scammer's end game is to dupe a lawyer into depositing a bad cheque into trust (the lawyer is invited to take his or her fees and disbursements from the funds on deposit). The lawyer is then tricked into paying the majority of the funds electronically to the scammer, before the lawyer or the lawyer's financial institution realizes the instrument is bad, leaving the lawyer's trust account short, overdrawn or both. The bad cheque is sometimes of such high quality that even banks are initially fooled. A successful scam may result in a six-figure loss. In August 2016, a BC lawyer reported being defrauded out of approximately $500,000 in a bad cheque scam; see the August 4, 2016, Notice to the Profession: Phony debt collection nets scammer $500,000.

Although the names, email addresses and ruses may change, some of the common ruses recently used for the bad cheque scam are collecting on a family law separation agreement, equipment purchase and sale (dredgers have been popular), commercial and personal loans and unpaid invoices. The scammers provide lawyers with convincing documents (loan agreements, promissory notes, purchase orders, invoices, settlement agreements, collaborative divorce agreements, correspondence, interest calculations, court documents and scans of passports and driver's licences).

Scammers have learned "legal lingo" from lawyers and ask lawyers for their retainer agreement and may comment on a lawyer needing to perform a conflicts check. They may provide scans of identity documents by email in an effort to avoid the client identification and verification rules requiring verification of identity in person. The new client may also falsely claim to have been referred by a legitimate lawyer.

Change in payment instructions

If you are about to pay out trust funds and the payment instructions change, check thoroughly to ensure that the new instructions are legitimate. The instructions may have purportedly come from the client or from another lawyer. Make your staff aware of this scheme and review your protocols. See the May 7, 2015 Notice to the Profession: Fraudsters are targeting lawyers disbursing trust funds with a change in payment instructions. If your accounting staff's names and contact information are on your website, consider removing them from public view. Once a scammer knows a staff member's name, it is easy to figure out their email address because every address will presumably have the same domain name, e.g., @buchanan-andco.com.

"Phishing" scam targeting law firm accounting staff and lawyers

The April 8, 2015 Notice to the Profession: New email "phishing" scam targets firm accounting staff and lawyers, alerted lawyers to a scam then targeting Ontario law firms and now appearing in BC. The scammer spoofs a senior staff member's email address, making it appear that the email is actually sent by law firm staff, asking staff to send funds or divulge account information, ignoring normal protocols. The perpetrator may also pose as a lawyer from

another firm. In August 2016, an Ontario lawyer's email address was spoofed, directing a client to wire funds to a different bank account to complete a purchase, citing a restructuring of the firm's finance department. A follow-up phone call was reportedly made to the client, which displayed the lawyer's firm number.

HOW DO YOU PROTECT YOURSELF?

See our web page, Fraud: Alerts and Risk Management, for more information about how to identify the bad cheque scam and other fraud schemes. Become familiar with the bad cheque scam names and documents list as well as the common characteristics and red flags and ongoing twists and developments. Review the bad cheque scam names and documents web page as part of your firm's intake process, particularly if the client makes initial contact by email and professes to be outside of Canada. If the potential client's name is not on the list, do a Google search of the name and the other party's name. A name search combined with the word "fraud" or "scam" may bring up information about a legitimate business whose cheques were altered or counterfeited by a scamster. There is an abundance of information on the Internet about scams.

Follow the client identification and verification rules (Rules 3-98 to 3-109). Compliance with the rules is a prerequisite for coverage under the compulsory policy's trust shortage liability insurance, if a lawyer suffers a trust shortfall as a result of the bad cheque scam. Download the Client Identification and Verification Procedure Checklist in the *Practice Checklists Manual* and read the related frequently asked questions in the Practice Resources section of our website. Appendix 1 of the checklist is a sample attestation for the verification of identity of a client who is in Canada, but not physically present before the lawyer. Appendix II is a sample agreement between the lawyer and the lawyer's agent to verify the identity of a client who is outside of Canada (frequently claimed to be the case in the bad cheque scam). Appended to the agreement is a sample attestation form for the agent's use. Select the commissioner, guarantor or agent yourself so that you do not fall victim to setting up the situation for a potential scammer to provide you with a phony attestation.

If you suspect it is a bad cheque scam, either decline to act or require payment to be made directly between the parties rather than through your trust account.

Watch the free webinar for lawyers, *The bad cheque scam – don't get caught*, available in the Practice Resources section of our website (one-hour CPD credit available).

Appoint someone in your firm to keep lawyers and relevant staff up to date with information from the Law Society. Subscribe to the Fraud Alerts RSS feeds and encourage non-lawyer staff to subscribe. Staff can also sign up for free electronic subscriptions to the *Benchers' Bulletin* (includes Notices to the Profession and E-Brief).

Consult with your IT professional regarding your antivirus software, strong passwords and other security information. Speak with your bank about other steps that you can take to enhance security, including the advantages of receiving trust funds electronically.

If you need commercial liability insurance, buy it. Although the compulsory policy provides some coverage for the bad cheque scam if the prerequisites are met, it does not otherwise respond to thefts or trust shortages caused by frauds. However, insurance is available commercially for various forms of fraud. Talk to your broker about what is available. For more information and a list of brokers, read our web pages, Other commercial liability insurance products: Protection for claims that our policy does not cover and List of excess and other commercial liability insurance brokers.

Report potential new scams by sending an email to fraud@lsbc.org. Call a practice advisor for advice if you are uncertain about how to apply the client identification and verification rules or want other confidential advice.

Report confirmed scams to the Government of Canada's Canadian Anti-Fraud Centre (CAFC). Although fraud attempts against lawyers are not specifically targeted, the CAFC collects information and criminal intelligence regarding various types of fraud complaints. In addition, they provide information and resources to protect yourself, such as the *Get Cyber Safe Guide for Small and Medium Businesses*.❖

Services for lawyers

Law Society Practice Advisors

Dave Bilinsky
Barbara Buchanan, QC
Lenore Rowntree
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.

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

◆

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

◆

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

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 that a conduct review is a more effective disposition and is in the public interest. The committee takes into account a number of factors, including:

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

CLEARING AGED TRUST BALANCES

A lawyer acted contrary to Law Society Rule 3-64(1) by improperly authorizing the transfer of residual trust balances to her firm's general account on 12 client matters. Further, she failed to adequately supervise her staff contrary to Chapter 12, Rules 1 and 3 of the *Professional Conduct Handbook* then in force and rules 6.1-1 and 6.1-3 of the *Code of Professional Conduct for British Columbia*. A compliance audit revealed that the firm had developed a long-standing practice of clearing small trust balances on conveyance files by rendering dummy accounts on the files and writing trust cheques to pay the accounts. The accounts were never provided to the client and were generated by describing disbursements that had not been incurred. This practice was in place prior to the lawyer joining the firm and the Law Society's investigation revealed that no lawyer in the firm was aware of the practice. The investigation revealed that $185.16 was improperly transferred on 19 files, 12 of which were the responsibility of this lawyer. The lawyer was also responsible for the conveyancing department. As such, she acknowledged and accepted full responsibility for the misbehaviour of the staff member who was creating the dummy accounts to clear out small trust balances that remained when a file was about to be closed. A conduct review subcommittee advised the lawyer that her conduct was inappropriate because she was the signatory on the trust cheques that transferred the money from trust to the firm's general account where the supporting account for legal fees was never provided to the client. Though the amounts of money transferred in these circumstances were modest, the sanctity of the trust accounting rules must be respected. The lawyer acknowledged that she should have undertaken a thorough review of the systems in place when she assumed responsibility for the conveyancing department. She arranged for the firm to reimburse all clients that had been the subject of false accounts and implemented a different process for closing files in which a small balance remained in trust. The subcommittee was satisfied that neither this lawyer nor any other lawyer in the firm was aware of the non-compliant approach to clearing small trust balances that was being undertaken by the law firm staff. (CR 2016-11)

A second lawyer from the law firm referenced in the above conduct review summary authorized the transfer of residual trust balances to his firm's general account on seven of the 19 files referred to above, contrary to Law Society Rule 3-64(1). The lawyer acknowledged his responsibility for inappropriately signing the trust cheques. He confirmed his understanding of the accounting rules and acknowledged that the practice that had been adopted to clear out small trust balances with cheques drawn on the firm's trust account was entirely inappropriate. The lawyer accepted full responsibility for his own misconduct, though he suggested that the primary responsibility for the misbehaviour resided with the lawyer then in charge of the conveyancing department. The subcommittee felt that his suggestion overlooked the fact that the system used in this improper manner had been in place for many years prior to the engagement of the lawyer who then had responsibility for the department. In the subcommittee's view, this lawyer did not fully acknowledge responsibility for the institutional systemic inadequacies that were clearly in place during the time period that he had a hands-on connection with that department. The lawyer assured the subcommittee that he has adopted an appropriate method to see that these circumstances will not be repeated. He will not sign trust cheques other than those for which he has a direct responsibility arising from his own files. (CR 2016-12)

QUALITY OF SERVICE

A lawyer failed to serve her clients in a conscientious, diligent and efficient manner to provide a quality of service expected of a competent lawyer, contrary to rule 3.2-1 of the *Code of Professional Conduct for British Columbia*, by failing to attend to the filing of an application to obtain letters of administration within a reasonable time frame and failing to respond to reasonable requests for information from her clients. The lawyer also failed to maintain adequate supervision of her assistant, contrary to rule 6.1-1 of the *BC Code*, and failed to provide her clients' new lawyer with a prompt response to his requests for the file or information about the status of the file, contrary to rule 7.2-5 of the *BC Code*. The lawyer, who was retained to apply for letters of administration, relied heavily on her assistant to communicate with the clients and to complete the relevant documentation. An application was initially prepared and filed in a timely manner but it was rejected by the registry for a variety of reasons and was never

completed. Throughout the course of the retainer, the clients made numerous requests for information on the status of their file. When the clients retained a new lawyer and the new lawyer asked for the clients' file, the lawyer failed to respond promptly to the requests for the file or information on its status. The lawyer explained that, at the time, her assistant told the lawyer that one of the clients spoke with her assistant and confirmed that the file was not, in fact, to be moved. The client advised the Law Society that the assistant was mistaken. The lawyer admitted that she took no steps to verify the information from the assistant, either with the clients or new counsel, which again served to delay the transfer of the clients' file. The lawyer said that it was clear her office dropped the ball in processing the application and admitted that she failed to keep track of the clients' matter adequately. She agreed that she should have done better at supervising her assistant, but attempted to explain some of the delay on the file by recounting her assistant's personal circumstances. A conduct review subcommittee emphasized that, while difficulties in staffing arise and are understandable, it remains a lawyer's obligation to supervise staff and review and oversee all matters to ensure clients receive prompt and diligent service. The subcommittee reviewed the lawyer's office systems and processes and discussed areas for improvement. To avoid such failures in the future, the subcommittee recommended that the lawyer: (a) take steps, initiate office policies and, if needed, update her technology to ensure that she reviews all correspondence, including emails, from clients and others to determine what she needs to handle and what she can, with instructions and supervision, delegate to her assistant; (b) improve her bring-forward system to ensure that outstanding matters are properly tracked and followed up on; and (c) meet at least daily with her assistant to supervise the assistant's work and to determine if there are any issues that the lawyer needs to deal, or help deal, with directly. The subcommittee also recommended that the lawyer, her assistant and anyone else communicating regularly with clients or other counsel take the Communications Toolkit course available on the Law Society's website. (CR 2016-14)

BREACH OF UNDERTAKING

In representing a vendor in a real estate matter, a lawyer breached his undertakings by failing to obtain a discharge in a timely manner, failing to promptly attend to the registration of the discharge and failing to provide particulars of the registration, all contrary to rules 5.1-6 and 7.2-11 of the *Code of Professional Conduct for British Columbia*. The lawyer also failed to respond to opposing counsel's communications about the charges that remained on title, contrary to rule 7.2-5 of the *BC Code*. The lawyer submitted four Form C releases to the Land Title Office (LTO) in one package to discharge four mortgages on the property. The LTO rejected the package because the name of one charge holder had changed. The lawyer failed to take any steps to fix the defect notice and to communicate with the purchaser's counsel again until after the complaint was made to the Law Society. The lawyer acknowledged that he did not address the name change in a timely fashion and, because of that, all of the releases were cancelled. A conduct review subcommittee discussed with the lawyer the obligation to fulfill all undertakings and the importance of undertakings to the profession. He should have immediately advised purchaser's counsel of the LTO defect so purchaser's counsel could speak to his clients about why the charges were still on title months later. The lawyer admitted his conduct was inappropriate and expressed regret. He wrote a letter of apology to purchaser's counsel and the subcommittee accepted that his apology was heartfelt. The lawyer also volunteered to take various steps to avoid being involved in this type of conduct again. (CR 2016-13)

In representing a client in the sale of real property, a lawyer breached an undertaking that required her to pay outstanding property taxes and penalty upon receipt of sale proceeds, contrary to rules 5.1-6 and 7.2-11 of the *Code of Professional Conduct for British Columbia*. The lawyer also failed to provide prompt service to her client when she failed to take steps to clear title to the property for approximately nine months after the transaction closed, contrary to rule 3.2-1 of the *BC Code*. The lawyer admitted that she had been remiss in not ensuring that the property taxes were paid, but maintained that it was an error based on an overly cursory review of a tax receipt provided by the client, that she relied primarily upon her assistant to contact the client and that she acted diligently in remediating the error once it was discovered. A conduct review subcommittee pointed out that the receipt was out of date and the error was only discovered when the other party's notary reminded her of the undertaking months later. The property taxes were paid by the client, rather than the lawyer, and paid approximately six months after the initial undertaking and four months after the reminder was sent. The lawyer indicated that she relied on her assistant to ensure the matters relating to the undertakings were completed and did not pay attention to the steps or efforts the assistant was taking, nor to the particular wording of the undertakings. The lawyer admitted the breaches of undertaking, expressed an understanding of the importance of fulfilling undertakings in a prompt and diligent fashion, and acknowledged that her delict lay in an overreliance on her assistant, but expressed no clear intention or awareness of how to remediate or otherwise prevent similar occurrences in the future. The lawyer accepted the subcommittee's suggestion that reading the undertakings more carefully may have gone some distance to alleviate the difficulties. The subcommittee made several recommendations to the lawyer, including to implement office policies and regular meetings with her assistant, to supervise her work and to determine what she needs to handle herself and what she can, with instructions and supervision, delegate to her assistant. (CR 2016-15)

THREATENING CRIMINAL OR REGULATORY PROCEEDINGS

A lawyer threatened an opposing party, through his counsel, with criminal or quasi-criminal proceedings, in an attempt to gain a

benefit for a client, contrary to rule 3.2-5(a) of the *Code of Professional Conduct for British Columbia*. The lawyer represented a client in a family law matter concerning spousal support and other issues. The opposing party was on disability income through the Canada Pension Plan. During the course of negotiations, the lawyer sent an email to opposing counsel alleging that the opposing party was not suffering from a disability and was engaging in work and not reporting income. The lawyer stated he had evidence of the opposing party's activities to prove this deceit and suggested that this evidence would become public in the course of a trial but that the opposing party could take a "better course of action." The lawyer believed he did not violate the letter of rule 3.2-5(a), but acknowledged that he could have done better in both what he said and how he handled the situation. A conduct review subcommittee advised the lawyer that, not only was his conduct inappropriate for the possible breach of the rule, but also the issue seemed symptomatic of broader issues. As an example, it was pointed out to the lawyer that the tone of some of his letters would be seen as insulting to other counsel and that this did not serve in negotiating a settlement of his client's cause. The lawyer explained that he acted out of frustration but agreed that did not give him an excuse to behave in the manner he did. The lawyer acknowledged that he could not handle the stresses of practice on his own and explained various steps he was taking to address that. The subcommittee emphasized the need for the lawyer not to become isolated from others but advised the lawyer they were encouraged by the steps he had taken thus far and encouraged him to continue to do so and not to be afraid to seek help when needed. (CR 2016-16)

IMPROPER BILLING

A compliance audit and subsequent investigation revealed that a lawyer accepted an assignment of a bill of costs when he already had a contingency fee agreement with the client, in breach of section 67(2) of the *Legal Profession Act* and Law Society Rule 8-1(2). He also failed to deliver to that client a bill for disbursements within a reasonable time by delaying two and a half years, in breach of section 69 of the Act. The investigation also revealed two instances in which the lawyer made fixed fee arrangements with clients and received payments characterized as "non-refundable" retainers, without advising the clients of their right to review under section 70 of the Act. The lawyer acknowledged his misconduct and agreed that taking a "non-refundable" retainer without specifically advising the client of the right to have the court review a bill or fee agreement was wrong and potentially misleading. The lawyer assured a conduct review subcommittee that he was aware of the relevant provisions of the Act and Rules and advised that he had not, since these matters had been brought to his attention, taken "non-refundable" retainers from clients. He further advised that he had not made any fixed fee arrangements with clients in that time, but if he were inclined to enter into a fixed fee arrangement, he would follow the recommendations he received from the Law Society staff lawyer and, if necessary, get advice from a practice advisor. He advised he ensures clients are aware of their right to seek review of any fee agreement or bill. The subcommittee accepted that the lawyer seemed thoughtful and sincere and had carefully reflected on these matters. (CR 2016-17)

CONFLICT OF INTEREST / OBSTRUCTION OF LAW SOCIETY INVESTIGATION

A lawyer acted in a conflict of interest by acting against a former client, contrary to Chapter 6, Rule 7 of the *Professional Conduct Handbook* then in force, by acquiring a financial interest in two corporations without complying with the requirements of Chapter 7, Rule 5 of the Handbook, and by providing legal services after having acquired a financial interest in two corporations, which would reasonably be expected to affect his professional judgment, contrary to Chapter 7, Rules 1 and 2 of the Handbook. The conflicts of interest arose as a result of the lawyer's representation of a client who, along with one other individual, was a shareholder of Company A and subsequent representation of Companies B and C in which the lawyer acquired a minority financial interest in lieu of payment and in consideration for the use of his office and administrative assistance. He acquired the financial interest without having Companies B and C acknowledge in writing that he was not representing them in the acquisition and that they should not rely on his advice in the matter, and without ensuring that Companies B and C were independently represented in all aspects of the acquisition. In addition, having earlier acted for the client and the other shareholder of Company A, the lawyer, at the request of Companies B and C, arranged for another lawyer to prosecute a lawsuit against the client and other shareholder of Company A. The lawyer briefed the other lawyer about the matter and provided him with most of his instructions. The client complained to the Law Society, after which the lawsuit was settled. The lawyer drafted a settlement agreement that contained a term requiring the withdrawal of the complaint to the Law Society, contrary to Chapter 2, Rule 1, Chapter 4, Rule 2 and Chapter 13, Rule 3(c) of the Handbook.

The lawyer stated that it had never occurred to him that he could not include a term in the settlement agreement concerning the withdrawal of the complaint. A conduct review subcommittee explained that the term was indefensible, even if the parties to the agreement promoted its inclusion, and that such terms undermine public confidence in the regulatory process by suggesting that investigations into lawyer conduct can be negotiated away. The lawyer expressed that he had not intended to thwart the investigation and he now understood he must not interfere with the discharge by the Law Society of its responsibilities as a governing body. As for acting against a former client, the lawyer did not previously understand, but now did, that his act of procuring, briefing and instructing the other lawyer in the lawsuit against the complainant constituted the practice of law. He understood he could not use confidential information against a former client and he would not allow such a thing to happen again. Regarding the conflict arising from his acquisition of a financial interest in and

representation of Companies B and C, the lawyer confirmed that he had not been aware of the requirements and it did not occur to him that his clients needed protection. He now recognized that the clients should have been independently represented. The subcommittee noted that it was especially important to ensure that clients are protected where lawyers and clients (or their principals) are friends and where, naturally, the clients' sense of comfort is heightened. The lawyer stated that his financial interest in the companies did not affect his professional judgment because the interest was so small. The subcommittee stated that whether his judgment would be affected should be determined by reference to the expected value of his interest were the clients to succeed with their venture. Nevertheless, the important question was not whether the lawyer owned small percentage interests in the clients but, rather, whether he would be seen to be an objective advisor.

The lawyer confirmed that this experience had caused him to pay more attention, that he was now moving a little slower in his practice and that he recognized he could not make snap decisions. He confirmed that he belonged to a group of lawyers who meet to fulfill their CPD requirements and that he would continue as a member of that group. He said he was reading more Law Society publications than he previously did and that he called on his counsel for advice when required. The subcommittee was satisfied that the lawyer knew he could not deal cavalierly with his professional responsibilities in the future. (CR 2016-18)

BREACH OF CLIENT CONFIDENTIALITY

A lawyer breached the confidentiality owed to his client by disclosing in a filed affidavit the legal advice that he had provided his client, contrary to rules 3.3-1 and 3.3-2 of the *Code of Professional Conduct for British Columbia*. The lawyer was representing the client in a medical malpractice claim and brought an application to withdraw as counsel. In his application materials he disclosed portions of legal advice that he had given the client on the merits of the case and, in doing so, compromised the client's case and left it in a shambles. The lawyer admitted professional misconduct and recognized that his actions had compromised the client's case and caused the client real harm. A conduct review subcommittee reminded the lawyer about the fundamental trust clients place in their lawyers not to betray their confidential information. Clients expect and are entitled to protection and should never be "thrown under the bus," as this client was. This trust goes to the heart of the lawyer-client relationship, and his conduct fell well below the standard expected of lawyers. The lawyer acknowledged his error and felt sympathy for the client. He recognized that he was not as familiar with this area of law as he needed to be to have properly taken on this case. He agreed to reach out to other lawyers if he found himself in similar circumstances, and he agreed to read the Supreme Court of Canada decision in *R.* v. *Cunningham*, which speaks to counsel's obligations on an application to withdraw. The subcommittee encouraged the lawyer to consider succession planning and to identify a plan for his practice and his clients in the event of his retirement or some unexpected event. (CR 2016-19)

LAND TITLE ACT ELECTRONIC FILINGS

A lawyer provided his Juricert password to his assistant to affix the lawyer's digital signature on electronic documents filed in the Land Title Office, contrary to the lawyer's Juricert Agreement and Part 10.1 of the *Land Title Act,* and in breach of Law Society Rule 3-64(8) and rule 6.1-5 of the *Code of Professional Conduct for British Columbia*. The conduct came to light during a compliance audit. The lawyer admitted the breaches and admitted it happened no more than 20 times. The lawyer had a busy real estate practice and, at the time of the breaches, he had not fully comprehended that he was prohibited from sharing his password with his assistant. A conduct review subcommittee advised the lawyer that his conduct was inappropriate because the electronic filing system is dependent upon lawyers using their passwords themselves and not sharing them with non-lawyers. The lawyer admitted that he was now fully aware of his obligations and had instituted procedures within his office to prevent this happening again. He has circulated a *Benchers' Bulletin* directive on the use of Juricert passwords to all lawyers and staff in his office. He understood that, if this happened again, it may lead to a citation and hearing. (CR 2016-20)

BREACH OF TRUST ACCOUNTING RULES

A compliance audit of a lawyer's practice revealed that the lawyer had:

1. improperly withdrawn client trust funds over a three-year period when the trust accounting records were not current and when there were insufficient funds on deposit to the credit of the clients, contrary to one or both of Law Society Rules 3-63 and 3-64(3);
2. failed to prepare monthly trust reconciliations for the lawyer's pooled trust account within 30 days of the effective date of the reconciliations for one or more of the months in a six-month period, contrary to Law Society Rule 3-73;
3. failed to remit the trust administration fee to the Law Society within 30 days, contrary to Law Society Rule 2-110; and
4. permitted conveyancers to use the lawyer's Juricert password and affix her personal digital signature to property transfer tax returns and to Forms A, B and C transfers in real estate conveyances over a 17-month period, contrary to Part 10.1 of the *Land Title Act* and in breach of Law Society Rule 3-64(8) and rule 6.1-5 of the *Code of Professional Conduct for British Columbia*.

The lawyer was poorly prepared for sole practice and had financial and personal problems early into the practice. The practice was not properly supervised, resulting in trust shortages. The problematic issues

continued on page 23

Discipline digest

BELOW ARE SUMMARIES with respect to:

- Ian David Reith
- Martin Drew Johnson
- Diep Thanh Hoang Nguyen
- Joseph Harry McCarthy
- Michael Saul Menkes
- Kerri Margaret Farion
- Tracey Lynn Jackson
- Lawyer 15
- Shirley Chu

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

IAN DAVID REITH

Whistler, BC

Called to the Bar: May 19, 1989

Discipline hearing: March 2, 2016

Panel: Phil Riddell, Chair, Donald Amos and Richard Lindsay, QC

Decision issued: May 30, 2016 (2016 LSBC 19)

Counsel: Patrick McGowan for the Law Society; Ian David Reith on his own behalf

FACTS

Between January and September 2013, Ian David Reith provided legal services in the transfer of shares of a company between two registered shareholders and the purchaser. The two vendors saw Reith listed on the company's website in January and contacted him to provide legal services, to which he agreed. The company's director had previously advised Reith in October 2012 that the company was to change counsel to another law firm. Reith did not discuss the change in counsel with the two vendors or the purchaser.

Reith acted for both the vendors and the purchaser and both parties knew this. Reith failed to comply with rule 3.4-5 of the *Code of Professional Conduct for British Columbia* by not advising the parties that the information could not be treated as confidential and, if a conflict developed, Reith could not continue to act for both parties and may have to withdraw completely. A conflict almost did develop when the vendors threatened to withdraw due to delays in closing the transaction.

Reith failed to explain to his clients the nature of his retainer, including the tasks he would perform and the fees he would charge. Reith also agreed on his clients' behalf to pay the transfer fee of $504 to the company's new counsel without discussing the fee with the clients. Reith left it to his clients to determine the purchaser's share of the property tax and the company's assessment.

Reith failed to advise the clients he was taking vacation in the summer of 2013 and how this might affect his ability to complete the transaction. He was aware the clients wished the transaction to complete that summer.

Reith prepared for his clients statements of adjustments that were incomplete and inaccurate. In August 2013, Reith sent the purchaser the Purchaser's Statement of Adjustments. The purchaser expressed concerns, including the inaccurate completion, possession and adjustment dates, a higher transfer fee and legal fees payable to Reith that had not previously been discussed. He did not sign the statement, and as a result, there is no signed Purchaser's Statement of Adjustments in respect of the transaction.

The vendors signed the Vendors' Statement of Adjustments and returned it to Reith. The statement referenced legal fees and disbursements payable to Reith and the same completion, possession and adjustment dates as the Purchaser's Statement of Adjustments. The closing date had passed, and the statements did not reflect the clients' agreement as to who would pay the transfer fees. Reith's legal fees were not as agreed between the clients.

ADMISSION AND DISCIPLINARY ACTION

Reith admitted to committing professional misconduct by failing to provide a quality of service that would be expected of a competent lawyer. The panel accepted his admission.

The panel considered Reith's professional conduct record. Reith had previously committed similar professional misconduct when he acted for multiple parties without complying with the rules and failed to serve his clients in a conscientious, diligent and efficient manner. He was the subject of another conduct review for failing to provide his clients notice of his holiday plans and failing to make provisions to allow his clients to complete their real estate transaction.

The panel ordered Reith to pay:

1. a fine of $7,500; and
2. $5,636.25 in costs.

Reith has applied for a review of the hearing panel's decision.

MARTIN DREW JOHNSON

Kelowna, BC

Called to the Bar: May 10, 1977

Bencher review: March 3, 2016

Benchers: Lynal E. Doerksen, Chair, Satwinder Bains, J.S. (Woody) Hayes, Dean P.J. Lawton, C.E. Lee Ongman, Carolynn Ryan and Jamie Maclaren

Decision issued: May 31, 2016 (2016 LSBC 20)

Counsel: Alison Kirby for the Law Society; Tony S. Paisana for Martin Drew Johnson

BACKGROUND

In March 2011, Martin Drew Johnson was involved in an altercation outside a courtroom with a police officer, who had previously arrested Johnson's client and was a potential witness. Johnson asked him a question related to the charge, and the exchange between them became heated and volatile. They were reportedly "nose to nose," and Johnson responded to some remarks by saying "f*** you" to him. The officer then told Johnson he was under arrest, placed him in handcuffs and took him down the hallway. The officer sought to have charges laid against him for assault, but charges were ultimately not laid against Johnson for assault or any other offence.

A hearing panel determined that Johnson's behaviour was a marked departure from the standard of conduct that the Law Society expects of lawyers and constituted professional misconduct. Johnson was ordered suspended for 30 days and to pay costs of $10,503.05 (facts and determination: 2014 LSBC 08; disciplinary action: 2014 LSBC 50; Winter 2014 discipline digest).

DECISION OF THE BENCHERS ON REVIEW

Johnson applied for and was granted an extension of the time to apply for a review (2015 LSBC 40). He sought a review of the hearing panel's decisions, arguing that the panel erred in concluding that provocation is "irrelevant" and should not be a defence to professional misconduct, in concluding that his actions constituted professional misconduct, and in overemphasizing his previous disciplinary record and giving little weight to letters of reference.

The defence of provocation is not recognized in the *Legal Profession Act* or the Law Society Rules. It is a partial defence in criminal law. The review board declined to apply it in this case, although it would be an error to say that it may never be a factor in a hearing panel's decision. The majority of Benchers (Doerksen, Bains, Hayes, Lawton, Ongman and Ryan) upheld the finding of professional misconduct by the hearing panel.

One Bencher (Maclaren) disagreed with the finding of professional misconduct. Maclaren stated that Johnson's comment was provoked by the officer and was a "one-off" comment that was reflexive and that had no ulterior motive. While the conduct was wrongful, Maclaren did not find it a "marked departure" from the standards set by the Law Society.

In regards to Johnson's claim that the hearing panel overemphasized his disciplinary record, the Benchers determined that it was within the panel's discretion to give more weight to his past conduct as opposed to the positive letters of reference. Putting too much weight on letters from colleagues and friends of Johnson would detract from the Law Society's duty to protect the public interest. The Benchers upheld the penalty imposed by the hearing panel.

Johnson has appealed the decision of the Bencher review to the Court of Appeal.

DIEP THANH HOANG NGUYEN

Vancouver, BC

Called to the Bar: May 15, 1992

Review: April 7, 2016

Review board: Lee Ongman, Chair, Paula Cayley, Lynal Doerksen, Carol Gibson, David Layton, Sharon Matthews, QC and William Sundhu

Decision issued: June 9, 2016 (2016 LSBC 21)

Counsel: Carolyn Gulabsingh for the Law Society; Henry Wood, QC for Diep Thanh Hoang Nguyen

BACKGROUND

A hearing panel concluded that Diep Thanh Hoang Nguyen had committed professional misconduct by fabricating a disbursement on a client's account and by falsely representing to the Law Society that the disbursement was genuine. The panel suspended Nguyen for 60 days, fined her $10,000 and ordered her to pay costs of $2,925 (hearing decision: 2015 LSBC 32; Fall 2015 discipline digest).

Nguyen sought a review of the panel's decision on disciplinary action. She took no issue with the 60-day suspension, but she argued that the imposition of both a suspension and a fine was excessive in the circumstances and wrong in principle, and that the fine should therefore be overturned.

DECISION OF THE REVIEW BOARD

The review board concluded that the hearing panel erred in application of legal principles and imposed an excessive penalty in fining Nguyen in addition to suspending her for 60 days. The board decided that the appropriate disciplinary action was a 60-day suspension and costs only, and no fine.

JOSEPH HARRY MCCARTHY

Smithers, BC

Called to the Bar: May 17, 2000

Discipline hearing: April 14, 2016

Panel: Nancy Merrill, QC, Chair, James Dorsey, QC and Lois Serwa

Decision issued: June 14, 2016 (2016 LSBC 23)

Counsel: Carolyn Gulabsingh for the Law Society; Terence La Liberté, QC for Joseph Harry McCarthy

BACKGROUND

On July 15, 2015, a citation was issued. Joseph Harry McCarthy admitted the allegations contained in the citation were proven and that they constituted professional misconduct, and accepted the proposed disciplinary action. The hearing panel accepted his admission.

AGREED FACTS

McCarthy was retained by the Legal Services Society to represent a client who had been charged with assaulting his brother, uttering threats and assaulting a peace officer. After McCarthy was retained, the client gave him the disclosure package and Crown Counsel Disclosure Notice he had previously been given while representing himself.

During a meeting in the Prince Rupert courthouse, McCarthy argued with his client and challenged him to a physical fight.

On May 9, 2013, McCarthy filed a Notice of Withdrawal of Designated Counsel form, and on May 15 the client asked McCarthy to return to him all documents that had been supplied by the RCMP, Crown Counsel or himself.

McCarthy mailed the disclosure documents he had received from the client to Crown Counsel in Prince Rupert.

McCarthy admits he should have returned the documents to the client, and that he did not consider that the client's handwritten notes on those documents may be subject to solicitor-client privilege.

McCarthy admits that he challenged the client to a fight, that he disclosed confidential information of the client, and that both actions constitute professional misconduct.

DISCIPLINARY ACTION

The panel ordered that McCarthy pay:

1. a fine of $6,000; and
2. costs of $1,236.25.

MICHAEL SAUL MENKES

New Westminster, BC

Called to the Bar: May 17, 1996

Discipline hearing: May 10, 2016

Panel: Pinder Cheema, QC, Chair, Shona Moore, QC and Graeme Roberts

Decision issued: June 20, 2016 (2016 LSBC 24)

Counsel: Carolyn Gulabsingh for the Law Society; Michael Saul Menkes on his own behalf

AGREED FACTS

In April 2009, Michael Saul Menkes's client was attacked by a police dog, and in November 2009 the client and her father retained Menkes to handle a personal injury claim.

In November 2009 Menkes filed a notice of claim with the Vancouver small claims registry. He did not at the time serve the notice of claim on the City of Vancouver or the Vancouver Police Board.

Between 2012 and 2013 the client's father contacted Menkes's office several times. Menkes admits he did not return the phone calls. The two met once or twice when the father visited Menkes's office without an appointment.

In or around November 2013, Menkes checked the status of the file at the Vancouver small claims registry and found only the notice of claim. He had not served the defendants with the notice of claim nor prepared and filed the required certificate of readiness.

Between May 2011 and April 2014 Menkes failed to include the client's file in monthly file status reports to the Practice Standards department, as required.

ADMISSION AND DETERMINATION

The panel found that Menkes had failed to meet his responsibility to provide quality and appropriate legal services to his client. The panel approved Menkes's conditional admission of professional misconduct and proposed disciplinary action, both of which had been accepted by the Discipline Committee.

DISCIPLINARY ACTION

The panel ordered that Menkes pay:

1. a fine of $7,500; and
2. costs of $1,259.39.

KERRI MARGARET FARION

Vancouver, BC

Called to the Bar: December 4, 2006

Suspended: August 4, 2015

Discipline hearing: May 13, 2016

Panel: Craig Ferris, QC, Chair, June Preston and Sandra Weafer

Decision issued: June 21, 2016 (2016 LSBC 25)

Counsel: Carolyn Gulabsingh for the Law Society; Kerri Margaret Farion on her own behalf

FACTS

In the course of investigating a complaint against Kerri Margaret Farion, the Law Society requested an interview with her. An appointment was scheduled, and on the morning of the agreed-upon date, Farion emailed the Law Society saying she could not make the appointment due to a medical appointment and requested to reschedule.

The Law Society replied immediately with proposed alternative dates and asking for evidence of the medical appointment. Farion did not respond. In total, Farion failed to respond to three letters, one email message and one voicemail message from the Law Society.

DETERMINATION

Farion accepted responsibility for her failure to respond to the Law Society's requests to provide a date for the interview and to provide proof of her attendance at the specialist appointment. However, her position was that the Law Society should have further investigated the complaint before interviewing her. In addition, she objected to providing any proof of her attendance at the specialist appointment because she says it is a breach of her privacy rights.

The panel viewed Farion's failure to respond as deliberate. She testified that she "got her back up" and did not view an interview as necessary and did not wish to submit any proof of her attendance at a medical appointment to the Law Society. The failure to respond goes directly to the Law Society's ability to regulate its members in the public interest. At the time of this decision, the original complaint that led to the request for an interview had been outstanding and unresolved some 15 months, and much of this delay can be attributed to Farion's failure to respond.

The panel determined that Farion had committed professional misconduct.

DISCIPLINARY ACTION

The panel ordered that Farion pay:

1. a fine of $2,500; and
2. costs of $2,494.60.

TRACEY LYNN JACKSON

Vancouver, BC

Called to the Bar: May 19, 1995

Discipline hearing: July 27 and 28 and September 15, 2015, and April 20, 2016

Panel: Herman Van Ommen, QC, Chair, Woody Hayes and Gavin Hume, QC

Decisions issued: December 11, 2015 (2015 LSBC 57) and June 27, 2016 (2016 LSBC 27)

Counsel: Kieron Grady for the Law Society; Geoffrey Cowper, QC, J. Kenneth McEwan, QC and Rebecca J. Robb for Tracey Lynn Jackson

FACTS

Tracey Lynn Jackson was retained to represent a client with regard to a dispute over certain chattels that were in a storage locker. She appeared on behalf of her client before a master of the court, who ordered the client to retain certain of the chattels.

Jackson and opposing counsel did not agree as to whether the master had ordered that the client must produce the key. Opposing counsel made application for further orders regarding the storage locker and key.

Jackson was on vacation, and an associate at her firm attended the hearing of opposing counsel's application. The associate came away from the hearing uncertain whether the judge had made an order regarding the key.

Opposing counsel advised she would appear before a master on September 17, 2012 to settle the terms of the order. Jackson instructed the associate to prepare an interpleader application allowing the key to be delivered to the court, and have it set down on September 14.

Jackson revised her affidavit to add a paragraph that stated, "I have no knowledge that any orders have been made with respect to storage locker and key fob."

The interpleader order was obtained on September 14, 2012, directing delivery of the keys to the court and extinguishing any liability Jackson's firm might have had with respect to the keys.

On September 17, 2012 the master issued his order including a term requiring production of the key.

On November 16, 2012 the opposing counsel's firm applied to set aside the interpleader order and sought special costs against Jackson personally. In response, Jackson filed a further affidavit repeating the statement, "I have no knowledge that any orders have been made with respect to the storage locker and key fob."

On November 29, 2012, a judge set aside the order extinguishing liability of Jackson's firm and, in adjourning the application for special

costs, spoke critically about Jackson's actions. Jackson voluntarily settled the claim for special costs by paying $15,703.16.

DETERMINATION

The hearing panel found that Jackson knew her affidavit sworn on September 13, 2012 was misleading, and that sending her firm's associate into court on an application without notice based on such deficient material constituted professional misconduct. The panel also found that statements Jackson made in her affidavit sworn November 28, 2012 were misleading and also constituted professional misconduct.

DISCIPLINARY ACTION

While Jackson breached the important duty of counsel to be candid and truthful in representations to the court, that conduct was inconsistent with the usual manner of her practice. She had no previous conduct record, and character letters made clear that she was well respected in and out of the profession. Jackson acknowledged her mistakes and has taken steps to ensure that they are not repeated. While misleading the court would lead to a suspension in most cases, the somewhat unique facts of this case led the panel to conclude that a reprimand and significant fine were appropriate.

The panel ordered that Jackson be reprimanded and pay:

1. a fine of $15,000; and
2. costs of $6,000.

Jackson has appealed the decision of the hearing panel to the Court of Appeal.

LAWYER 15

Metro Vancouver

Called to the Bar: 2011

Discipline hearing: September 21 and 22 and December 11, 2015, and April 30, 2016

Panel: Pinder K. Cheema, QC, Chair, Bruce LeRose, QC and Lance Ollenberger

Decision issued: July 19, 2016 (2016 LSBC 28)

Counsel: Carolyn Gulabsingh for the Law Society; Joven Narwal for Lawyer 15

FACTS

Lawyer 15 was a co-owner and director of a company that owned an apartment building in Alberta. In February 2011 a tenant in the building called the building manager to say that the tenant had contacted Alberta Health Services and arranged an inspection of his apartment due to concerns about mould. Another investor in the building notified Lawyer 15 of the conversation.

The health inspection took place on February 22, 2011. Shortly after the inspection, Lawyer 15 phoned the tenant to inform him that he would be evicted. Shortly after that phone conversation, Lawyer 15 emailed another of the building owners telling her to serve a notice of eviction immediately.

On March 28, 2011, Lawyer 15 spoke with a peace officer who was investigating the tenant's complaint under the *Residential Tenancies Act*. The peace officer asked whether Lawyer 15 had known of the complaint before the company filed an eviction notice. Lawyer 15 told him he had not been aware of any complaint prior to the eviction notice and that the reason for eviction was the tenant's aggressive behaviour.

On February 28, 2012, Lawyer 15 testified in court that he had only become aware the tenant had requested a health inspection after February 22, the date of the eviction notice.

DETERMINATION

The hearing panel determined that there was insufficient evidence to prove that, when Lawyer 15 represented to the peace officer that he was unaware that the tenant had complained to Alberta Health Services prior to the company issuing an eviction notice, he knew or ought to have known this was not true.

The panel also determined that there was insufficient evidence to suggest Lawyer 15 gave false testimony when he testified in court that he was unaware that the tenant had complained to Alberta Health Services before the company issued the eviction notice.

The hearing panel dismissed the citation.

SHIRLEY CHU

Richmond, BC

Called to the Bar: August 5, 1987

Discipline hearing: June 21, 2016

Panel: Elizabeth Rowbotham, Chair, Jasmin Ahmad and Robert Smith

Decision issued: September 2, 2016 (2016 LSBC 30)

Counsel: Carolyn Gulabsingh for the Law Society; Henry Wood, QC for Shirley Chu

FACTS

In the course of investigating a complaint against Shirley Chu, the Law Society sent a letter to her on November 9, 2015 and requested a written response.

Chu did not respond, and the Law Society sent a follow-up letter on December 2, 2015 asking that she provide all requested material by December 16. The Law Society also reminded Chu of her obligation to reply promptly and completely and advised that her failure to

respond may be referred to the Discipline Committee.

Chu emailed a legal assistant at the Law Society on December 10, 2015 stating she would respond to the request the following week. She did not do so.

A Law Society staff lawyer left Chu a voicemail message on December 17, 2015 asking her to return the call. Chu contacted the legal assistant the following day, who advised her to contact the staff lawyer on the next business day regarding the extension request.

The staff lawyer left voicemail messages on December 22 and 24, 2015 asking Chu to return her calls. She did not do so.

The Law Society sent Chu a letter dated December 24, 2015, which asked her to respond fully by January 7, 2016 and stated that, if she did not do so, the matter would be referred to the Discipline Committee. Chu did not provide a written response by the deadline, and a citation was authorized and issued on January 14 and 19, 2016.

On April 19, 2016, Chu provided a substantive response to the Law Society as originally requested.

DETERMINATION

Chu testified that her initial failure to respond to the Law Society's request was due to her immediate professional commitments to her clients. For the seven months prior to the request for a written response sent on November 9, 2015, Chu cooperated fully with the investigation and maintained open communication. After that date, substantive communication from Chu effectively ceased. The panel found that the circumstances of the failure to respond were not sufficient to rebut the prima facie evidence of misconduct. Chu admitted her conduct constituted professional misconduct.

The panel concluded that her failure to respond was a marked departure from the conduct the Law Society expects of lawyers and determined Chu committed professional misconduct.

DISCIPLINARY ACTION

The panel considered the context in which the failure took place and the subsequent delivery of her full response. It also considered her professional conduct record and her forthrightness at the hearing.

The panel ordered that Chu pay:

1. a fine of $2,000; and
2. costs of $1,276.79.❖

Conduct reviews ... from page 17

were identified during a compliance audit; the accounting problems were rectified by the time of a later audit, but that audit revealed the Juricert issues. No client suffered financial harm as a result of the accounting issues. A conduct review subcommittee reviewed with the lawyer her obligations under the rules relating to trust accounts and the provisions of the *Land Title Act* and the Law Society Rules relating to the personal use of a lawyer's electronic signature. The subcommittee confirmed that payment of the trust administration fee and practice debts were not optional, but rather mandatory. The subcommittee commended the lawyer for taking steps to address personal issues but, given the historical and chronic nature of the problem, it recommended that she instruct an accountant to do a spot audit or compliance check on an annual basis to make sure trust accounts were reconciled and in compliance with trust accounting rules. The lawyer agreed to hire an accountant to do a yearly spot check and to check the work done by the bookkeeper. She will also review the Law Society's *Trust Accounting Handbook* with her bookkeeper annually. (CR 2016-21)

BREACH OF NO-CASH RULE

A lawyer accepted an aggregate amount of cash of $7,500 or more on one client matter in breach of Law Society Rule 3-59, and did not issue all receipts required under Rule 3-70. While acting for a judgment debtor, the lawyer collected and forwarded cash payments to the judgment creditor pursuant to the terms of a Letter of Agreement that he prepared. He breached the "no-cash" rule by accepting an aggregate of $40,996 in cash from his client, the debtor, mostly through regular payments of $5,000. In addition, he failed to issue cash receipts for all but one of the cash payments. The lawyer acknowledged his conduct at the outset, indicating that he was aware of the "no-cash" rule. He believed he was simply a conduit between his client and the judgment creditor and that he was paying out the monies as a disbursement between the two parties, falling under the exception in Rule 3-59(4). When the purpose of the rule was explained by a conduct review subcommittee, the lawyer acknowledged that the "light came on" and indicated he now understood that his characterization of the monies was incorrect. In future, he will seek directions from the Law Society if he is unclear whether monies received fall within the Rule 3-59(4) exception. The subcommittee recommended that the lawyer use e-transfer or accept funds by charge card and also recommended that the lawyer's general bookkeeper review the Law Society's *Trust Accounting Handbook* specific to a law practice. The lawyer acknowledged that he did not have a written policy or procedure regarding cash receipts, and his past practice was deficient due to a failure to appreciate the requirements of Rule 3-70. He has since taken steps to educate himself on the requirements and changed his practice. (CR 2016-22)❖

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