The Law Society of British Columbia

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BENCHERS' BULLETIN

Keeping BC lawyers informed

Moving the dial on Truth and Reconciliation

by Nancy G. Merrill, QC

TRADITIONALLY, THE PRESIDENT'S last column is dedicated to providing a retrospective of the past year, as well as the outgoing president's reflections on what has occurred during her term as a Bencher. Significant progress has been made on several initiatives this year. There is much I could say about my experiences as a Bencher. But a recent positive development at the Law Society deserves to be the focus of some attention, and I propose to dedicate this space to important decisions that were made by the Benchers at our last meeting.

I am referring to the decisions to create an Indigenous intercultural competency course and require lawyers to achieve a baseline knowledge of topics and themes identified by the Truth and Reconciliation Commission (TRC). These are significant steps on the part of the regulator and the legal profession. British Columbia is the first jurisdiction in Canada to make progress on reconciliation by adopting legislation that will require all laws to be harmonized with the rights of Indigenous peoples. The Benchers' decisions prepare lawyers to participate in, and adapt to, potentially sweeping changes in all areas of law and legal practice.

The early response has been positive and encouraging. The number of likes on the Law Society's Twitter and sharing of the Law Society's media release and information has surpassed anything else that has been posted during my tenure as a Bencher. There has also been significant favourable media coverage on what lawyers will be doing to learn about the history and impact of our laws and legal institutions, and many Indigenous and non-Indigenous lawyers and individuals have re-tweeted and shared stories from newspapers and other media sources on their social media.

As with any significant development, there are some lawyers who are less welcoming of the training or that it will be mandatory. I have heard a handful of lawyers say that the training should be optional because Indigenous intercultural competency training is only relevant to lawyers whose practice involves Aboriginal rights and Indigenous clients. A few have called it "compelled thought," "political correctness" or "social engineering." One lawyer wrote to say that the Law Society does not have the authority to require lawyers to take the training course.

The criticisms that a small few have advanced are based on a misunderstanding or misrepresentation of what the training course will be. Section 28 of the *Legal Profession Act* establishes the Benchers' authority to improve the standard of practice by lawyers through continuing legal education. The training that the Benchers approved is evidence-based facts, information and knowledge about the law in relation to Aboriginal-Crown relations, the creation of residential schools and their legacy, specific legislation directed at Indigenous peoples, and the UN Declaration on the Rights of Indigenous Peoples. The modules that will be developed for the course will undoubtedly reflect the perspectives of Indigenous individuals and their experiences and how they perceive Canadian laws, lawyers and the justice system. But at its core, this is legal education to improve the standard of practice of lawyers and will be relevant to all lawyers in whatever area of practice.

I would like to acknowledge those whose vision and leadership informed our decision to develop Indigenous intercultural competency education and fulfil our commitment to implement the TRC's Call to Action. The Law Society's Truth and

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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.

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

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Increasing engagement

by Don Avison, QC

IN THE PAST year, the Law Society made a concerted effort to increase engagement with members of the profession, ensuring not only that they are informed of new developments as they happen, but that they have an integral part to play in shaping those initiatives. Gone are the days when lawyers relied on the quarterly mailout of *Benchers' Bulletin* to update them on the work of the Law Society. As the pace of change accelerates, members of the profession expect to be engaged and to be informed of changes that affect them, as those changes are implemented.

Our engagement efforts can be seen in the process that was taken to revise the Law Society's annual general meeting (AGM) procedures. Rule amendments that provide for online voting in advance of the AGM had to be approved by lawyers in a referendum. The Law Society took advantage of new media tools to educate members about the proposed changes, gather input, hold an online referendum and, once the changes were enacted, communicate the results. We engaged the profession by employing social media and online videos, in addition to our E-Brief newsletter, email notifications and website postings. The rule amendments were drafted, debated and enacted within a matter of months, in time for the 2019 AGM — which, by the way, was the shortest AGM on record.

The Law Society employed similar tools to engage lawyers in the recently concluded Bencher election. We produced brief online videos encouraging the nomination of diverse candidates, orienting candidates and potential candidates on the role of the Benchers and offering first-hand insights into what a potential nominee might expect in the way of responsibilities and commitments. Members were directed to these videos through social media, as well as more traditional communication channels, including email, our newsletter and website.

We regularly informed lawyers throughout the year about changes to trust accounting rules that affect thousands of lawyers. We held consultations with lawyers who practise in certain areas that were more likely to be affected by the changes, to ensure both that the changes reflect input from the profession and that they were fully briefed on the rule amendments before they took effect.

This year, the Law Society also stepped up its engagement with the provincial government in response to priorities regarding legal aid funding that members expressed in a resolution at the 2018 AGM. We took that message to Victoria, meeting on several occasions with the attorney general, provincial cabinet ministers, MLAs and senior public officials. By doing so, we ensured that the voice of the public on whose behalf we regulate the legal profession was heard, and we supported the dialogue between the BC government and the Association of Legal Aid Lawyers that led to new funding agreements.

In the coming year, the Law Society will look to implement further measures to improve engagement. We are working to add online resources that would allow members to track the progress of potential rule changes and key initiatives, to keep them better informed.❖

President's View ... from previous page

Reconciliation Advisory Committee, led by co-chairs Dean Lawton, QC and Michael McDonald, QC, whose membership includes Katrina Harry, Ardith Walkem, QC, Rosalie Yazzie and Benchers Claire Marshall, Karen Snowshoe and Martin Finch, QC, deserves particular recognition and gratitude. Thanks go out to others who have volunteered on the advisory committee in previous years, as well as to my predecessors — Kenneth Walker, QC, Mr. Justice David Crossin, Herman Van Ommen, QC and Miriam Kresivo, QC — all of whom were involved in various stages of shaping the Law Society's approach to reconciliation.

As my term comes to an end, I would also like to acknowledge and thank all of the Benchers for their contributions to the public interest throughout the year. It has been an honour to serve with you and I am fortunate to have had you as my colleagues. Beginning in January, Craig Ferris, QC will be the 2020 president of the Law Society. He will be supported by Dean Lawton, QC as first vice-president and Lisa Hamilton, QC as second vice-president. I thank them for their engagement and support during my term. Let me also take this opportunity to thank Don Avison, QC and the talented and dedicated staff he leads at the Law Society. There continues to be much work to do, and I am confident that the Benchers, volunteers and Don and staff will continue to make great strides that will benefit the public interest.❖

Craig Ferris, QC, 2020 president

Brian Dennehy Photography

ON A RAINY and cold November Monday, the mood at Lawson Lundell LLP remains warm and inviting. Even as our photographer provides instructions on arranging his blazer and cuffs, incoming president Craig Ferris, QC takes the time to pause and greet familiar faces walking by who are curious about the lights and production.

Craig has been a steady presence at the firm for 28 years, and it is as though practising law was written in the stars for him from an early age. Born and raised in the Oakridge-Kerrisdale area of Vancouver, he comes from a family of lawyers, including his father, sister and brother. "In my family, it wasn't a matter of *if* you were going to law school. It was a matter of when," he says.

In fact, Craig recalls his first administrative law argument was in grade six with his school's principal, who tried to punish him for an altercation with his friend on his way home. Craig argued the principal did not have jurisdiction over him after school and off school grounds. "We had a nice debate about the *School Act*," he grinned.

After receiving his degree in political science and his law degree from the University of British Columbia, he was called to the bar in 1991 and joined Lawson Lundell LLP that same year. After 23 years of practice, he decided to run for Bencher and was elected in 2014.

"The legal profession has been central in the lives of our family and has been good to us all. It was time to give back," he says. "As a political science major, I liked governance and policy. It was an attempt to rediscover those roots in myself." Since 2014, Craig has served on 10 Law Society committees and subcommittees and has chaired five of them.

Over the years, he has seen a positive shift in the way the Law Society operates, with a greater external focus on engaging the public and the profession. Craig played a part in that as well. As chair of the Rule of Law and Lawyer Independence Advisory Committee, he helped launch both the annual lecture series to stimulate public dialogue about the law and the high school essay contest to engage youth.

Engagement with the public is a direction that he hopes to continue during his term as president. Craig stresses the importance of consulting the public and incorporating their perspectives at the Law Society, especially in tackling the challenge of access to justice. "It is an existential question for the legal profession going forward. If we are unable to participate in the design of a system that works for people, we risk losing the privileges we have been granted to practise law."

Also a part of that is making sure the justice system works for Indigenous peoples. Craig looks forward to advancing reconciliation, which has moved to the forefront at the Law Society, thanks to the work of the Truth and Reconciliation Advisory Committee.

Craig hopes that the Law Society can be a more data-driven organization, especially when it comes to decisions involving the public interest. Data could better inform improvements to current processes, such as modernizing the complaints process. But, as much as it is important to move forward, he believes it is equally important to think back and review our systems to make sure they are responding to the public and the profession.

He is mindful that not all lawyers work in a large law firm in downtown Vancouver and he recognizes this experience only makes up a small sliver of the practice of law in BC. His experience as a Bencher has reminded him of the challenges and burdens placed on sole practitioners in small communities, as well as the perspectives of those who are disadvantaged and vulnerable in society.

"As lawyers, we tend to think we know a lot about the world. Sometimes we don't. Hearing different perspectives and issues that people are facing can be a challenge," Craig says. "Some of the realities are hard. They're not comfortable. Hearing those stories has made a difference in my life, beyond my work as a lawyer and Bencher."

Another challenge of being a Bencher, in his view, is time. He thanks his family, especially his wife Shelley to whom he has been happily married for 30 years, for putting up with his absences — though now it is his children who have flown the nest. His eldest son is an investment analyst working in New York, his middle child is an actor and is completing a masters in dramatic writing at New York University, and his daughter is studying commerce in her third year at Queen's University. While none of them are practising law, he is happy with their choices to pursue their passions. In his spare time, Craig runs and plays golf — in his words, "badly." He has completed 14 marathons, including ones in Boston and New York. He hopes to one day run a marathon in Europe, but that might have to wait until after his term as president.❖

Milestone reached with legal aid agreement

THE PROVINCE OF BC announced on October 15 that it had concluded an agreement with the Association of Legal Aid Lawyers and the Legal Services Society, marking the first significant progress in decades toward sustainable legal aid funding.

Attorney General David Eby, QC also announced that the province had established a formal and ongoing negotiating relationship with the Association of Legal Aid Lawyers and the Legal Services Society. The Law Society participated in the public announcement, with Jeff Campbell, QC emceeing the event and President Nancy Merrill, QC's comment included in the government press release.

The October event followed the announcement in 2018 of an increase of $26 million in legal aid funding over three years, the largest funding increase since 2002.

Merrill described the October announcement as a significant milestone in access to legal services in British Columbia, stating, "With this announcement, the provincial government is recognizing the important role legal professionals have in ensuring that vulnerable British Columbians have access to advice and representation for their legal problems."

Improving legal aid is a key component of the Law Society's commitment to improving access to justice. In 2017 the Benchers approved *A Vision for Publicly Funded Legal Aid in British Columbia*, and a commitment to pursue that vision was incorporated into the 2018-2020 strategic plan. At the 2018 annual general meeting, members called on the Benchers to continue advocating for legal aid funding, and in March this year the Law Society announced a coalition to raise public awareness of the difficulties vulnerable British Columbians face in finding legal assistance. Last June the Law Society made a submission to the province's budget committee that outlined its key priorities, focusing on improving the availability of legal aid and ensuring adequate resources for attracting and retaining lawyers who take legal aid cases.

The increased funding and the recently announced negotiating framework address the core issue of the legal aid tariff, with the promise of helping attract and retain more legal aid lawyers. However, expanding the criteria that determine who is eligible for legal aid and what legal matters are covered remain to be worked out. The Law Society will ensure its voice is included in these discussions as it continues to advocate for further improvements in access to justice.❖

2019 Indigenous scholarship winner

Congratulations to Shawnee Monchalin, winner of the 2019 Indigenous Scholarship (pictured with President Nancy Merrill, QC).

Shawnee Monchalin is of Algonquin and Huron descent from her grandmother, and of Metis descent stemming from her grandfather. This year she will complete her Juris Doctor degree at Peter A. Allard School of Law on the unceded traditional territory of the Musqueam people with a specialization in Aboriginal law.

Monchalin will begin her articles at Miller Thomson LLP in 2020. In 2017, she was the first Indigenous summer student intern with Miller Thomson and took part in reviewing environmental assessments and working with Indigenous communities on governance, economic development, law implementation and title claims. During her second summer at Miller Thomson, Monchalin participated in a secondment at a client's land office, where she focused on a variety of land holdings disputes on the reserve.

Monchalin was a clinician at the Indigenous Community Legal Clinic, where she worked as pro bono legal counsel for Indigenous clients during her studies. She has been a member, vice-president and executive fundraiser of the Indigenous Law Students Association, where she sat on the Allard Law Women's Caucus executive. As part of a directed research, Monchalin spent a semester examining the inequitable division of resource revenue for coastal BC Indigenous communities in the forestry industry. Among other volunteer positions, Monchalin has been an Allard Law ambassador and legal buddy for incoming and current students.

Outside of the legal community,

Brian Dennehy Photography

Monchalin is a dancer for Butterflies in Spirit, a group committed to bringing awareness surrounding the missing and murdered Indigenous women and girls in Canada and the related national inquiry.❖

Profession-wide implementation of law firm regulation self-assessment process

LAW FIRM REGULATION takes a proactive approach to regulation. It involves setting standards or principles for law firms and encouraging compliance, with the goal of addressing potential problems before they arise or managing problems before they lead to a complaint to the Law Society. It differs from complaints-driven regulation, which focuses on sanctioning rule violations. As part of its law firm regulation initiative, the Law Society is asking firms to think about key practice management areas and turn their minds to how they can ensure the standards are being met by lawyers at the firm.

In line with this proactive outcomes-based approach to regulation, the Law Society launched a pilot project in 2018 in which 10 per cent of firms in BC were asked to self-assess the policies that they have in place for eight key elements of practice management. Firms were provided with resources on the types of policies and processes they could use to satisfy standards for each key element. At the conclusion of the pilot, firms were polled. The results showed that two-thirds of respondents agreed that self-assessment increased awareness of practice management objectives at the firm, and 56 per cent agreed the exercise would promote action around improving policies at the firm. The majority of firms took less than two hours to complete the self-assessment and approximately 85 per cent reported the process was not onerous.

Based on the results of the pilot and polling responses, the Benchers have approved profession-wide implementation of the self-assessment process for all BC firms.

Implementation is anticipated to begin in 2021, in which one-third of law firms will be contacted to complete self-assessment, with another one-third contacted in 2022 and the final one-third in 2023. Firms will be required to complete self-assessment on this rolling basis once every three years. The Benchers have determined that self-assessment will only be used as an educational exercise at this time, and the self-assessment information shared with the Law Society will not form the basis of any disciplinary action. The Law Society will continue to collect data and evaluate the benefits and impacts of the program.

In the upcoming year, the Law Society will make modifications to improve the self-assessment format, functionality and content based on feedback obtained during the pilot.❖

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 faculties of law who have achieved the highest cumulative grade point average over their respective three-year programs.

In 2019, gold medals were presented to Andrew Tigchelaar of UVic (top left photo), Oliver Verenca of TRU (top right photo) and Gabriel Boothroyd-Roberts of UBC (bottom photo, with President Nancy Merrill, QC and Dean Catherine Dauvergne).❖

Photos: submitted by UVic (top left); Tyler Meade Photography (top right); Brian Dennehy Photography (bottom).

Bencher election results

THE BENCHER ELECTION for the two-year term from January 1, 2020 to December 31, 2021 was held on November 15, 2019. Four Benchers were elected for the first time (one by acclamation) and 18 were re-elected (four by acclamation).

Craig Ferris, QC (District No. 1), Dean P.J. Lawton, QC (District No. 2) and Lisa J. Hamilton, QC (District No. 1) will continue to hold office as Benchers until they complete their respective terms as president (Law Society Rule 1-5(4)).

President Nancy G. Merrill, QC congratulates the elected and re-elected Benchers and thanks all those who stood for election. Merrill also thanks the Benchers who will not be returning, acknowledging the years of dedicated service of Philip A. Riddell, QC, Sarah Westwood and Tony Wilson, QC. Merrill, Riddell and Wilson will become Life Benchers in 2020.❖

Here are the Benchers who were elected for the 2020-2021 term:

District No. 1 (Vancouver)
Jamie Maclaren, QC
Jennifer Chow, QC
Jasmin Z. Ahmad, QC
Jeevyn Dhaliwal,QC
Julie K. Lamb, QC
Brook Greenberg
Elizabeth J. Rowbotham
Jeff Campbell, QC
Steven McKoen, QC
Jacqueline G. McQueen
Karen L. Snowshoe

District No. 2 (Victoria)
Pinder K. Cheema, QC

District No. 3 (Nanaimo)
Chelsea Dawn Wilson

District No. 4 (Westminster)
W. Martin Finch, QC
Christopher A. McPherson, QC
Tom Spraggs

District No. 5 (Kootenay)
Barbara Cromarty

District No. 6 (Okanagan)
Michael F. Welsh, QC

District No. 7 (Cariboo)
Geoffrey McDonald
Heidi Zetzsche

District No. 8 (Prince Rupert)
Lisa Feinberg

District No. 9 (Kamloops)
Michelle D. Stanford, QC

For more information, see Bencher election results.

NEW BENCHERS IN 2020

Lisa Feinberg

Julie K. Lamb, QC

Tom Spraggs

Chelsea Dawn Wilson

Unauthorized practice of law

THE LAW SOCIETY of British Columbia acts to protect the public against individuals who hold themselves out to be lawyers when they are not.

From August 1 to November 1, 2019, the Law Society obtained written commitments from eight individuals and businesses to stop engaging in unauthorized practice of law. If they break their promise, the Law Society may obtain a court order against them. These individuals and businesses put the public at risk by performing unregulated and uninsured legal services or misrepresenting themselves as lawyers.

During that time period, the Law Society also obtained one order prohibiting an individual from engaging in the unauthorized practice of law.

On September 20, 2019, Madam Justice Marzari granted an order prohibiting **Man Cyril Law**, of Burnaby, from commencing, prosecuting or defending a proceeding in any court except if representing himself as an individual party to a proceeding acting without counsel solely on his own behalf. The court also awarded the Law Society costs in the amount of $2,000.

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

Recognizing excellence in the legal profession

Brian Dennehy Photography

Recipients display the 2019 Law Society awards (foreground, left to right: Raji Mangat; Nancy Cameron, QC; Peter Leask, QC; Claire E. Hunter, QC).

MEMBERS OF BRITISH Columbia's legal profession were recognized for their exceptional career achievements and contributions to their communities on December 6, 2019, at a ceremony held at the Vancouver Marriott Pinnacle Downtown Hotel. The Law Society congratulates recipients of the Law Society Equity, Diversity and Inclusion Award, Excellence in Family Law Award, Award for Leadership in Legal Aid and Pro Bono Award.

This year marks the introduction of awards designed by Rod Smith, a Kwakwaka'wakw sculptor based in Qualicum Beach. It is also the inaugural year of the Law Society Pro Bono Award.

"These awards celebrate the excellent work of lawyers throughout the province and those who have demonstrated an exceptional commitment, not only to the profession, but to the members of the public who they serve," said President Nancy Merrill, QC.

AWARD FOR LEADERSHIP IN LEGAL AID

The 2019 recipients are Marilyn Sandford, QC, Christopher Johnson, QC, Peter Leask, QC, H. William Veenstra, QC and Richard Fowler, QC on behalf of the Association of Legal Aid Lawyers.

In 2019 the association published a report titled *Restoring Funding for Legal Aid*, launched a public relations campaign and met several times with the attorney general to make the case for increased legal aid funding. The association reached agreements with the provincial government to increase funding for legal aid lawyers and to establish a formal negotiating relationship between the association, the Legal Services Society and the government.

> *"The Association of Legal Aid Lawyers not only secured significant funding commitments but attracted public support for legal aid and ensured a place for legal aid lawyers in future policy decisions. To achieve so much within a year is nothing short of remarkable."*
>
> – Christopher McPherson, QC, chair, Leadership in Legal Aid Award selection committee

EQUITY, DIVERSITY AND INCLUSION AWARD

The 2019 recipient, Raji Mangat, was called to the bar in 2011 and practises in Vancouver. She is currently the executive director of the West Coast Legal Education and Action Fund Association, where she was previously director of litigation. She has overseen litigation involving such areas as access to family law legal aid, transgender rights and employment discrimination.

Mangat has contributed to improving diversity and inclusion in the legal profession through her mentorship, recruitment and supervision of law student interns and articled students, and by serving on numerous boards of organizations that promote equality and inclusion.

> *"Raji's significant contributions to policy and legal reform, together with her impact on marginalized and disadvantaged people on an individual basis, make Raji a truly deserving recipient of this award."*
>
> – Jasmin Ahmad, QC, chair, Equity, Diversity and Inclusion Award selection committee

EXCELLENCE IN FAMILY LAW AWARD

The 2019 recipient, Nancy Cameron, QC, was called to the bar in 1988 and practises family law in Vancouver, specializing in collaborative practice and mediation. Since 2000, Cameron's practice has focused solely on consensual dispute resolution, primarily through collaborative practice, which draws on trained collaborative lawyers and mental health and financial professionals to educate, empower and guide parties to reach balanced, respectful and lasting agreements.

Cameron also developed the Pro Bono Collaborative Divorce Project and the Low Bono/Fixed Fee Model, which offers lower income families a way to separate peacefully that does not involve a contested court process.

> *"Nancy is always learning and seeking new ways in which we can improve how lawyers assist clients, both in terms of the larger justice system and also through commitment to efficiency and*

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FROM THE LAW FOUNDATION OF BC

Family law advocacy initiative

ADVANCING AND PROTECTING access to justice, especially for those who are often left out, is an integral part of the Law Foundation of British Columbia's vision and work. Much has been written with supporting statistics about the challenges experienced by those using the family justice system. In 2015, the rate of self-representation in family matters at the BC Court of Appeal was 57 per cent and at the Provincial Court it was 41 per cent. At the same time, legal aid across the country provides coverage for limited family matters and only for those with very limited means. In light of the demonstrated unmet need in family matters, the Law Foundation has developed a family law advocacy initiative that will provide guidance to those experiencing family law issues. The family law advocacy programs are modelled on the successful poverty law programs that the Foundation has supported for more than 15 years. This article describes how the family law advocacy programs will work to promote access to justice for marginalized persons in communities across British Columbia.

Navigating the justice system is challenging for everyone, but it can be particularly difficult for unrepresented litigants, who often find the process confusing, frustrating, intimidating and stressful. Poor organization, inclusion of irrelevant or immaterial evidence, omission of relevant non-expert evidence, and presentation of argument instead of evidence are the most common problems with the material prepared by unrepresented litigants. A trained and supervised advocate in the community has proven to be helpful in providing limited assistance to people with their family law problems.

Initially, the Foundation piloted family law advocacy programs in Kelowna and Quesnel. Both had very positive evaluations. In the last year or so, 20 new locations have been added in Abbotsford, Burnaby, Campbell River, Chilliwack, Coquitlam, Courtenay, Cranbrook, Fort St. John, Kamloops, Maple Ridge, Nelson, North Vancouver, Penticton, Port Alberni, Prince George, Richmond, Surrey, Terrace, Williams Lake and Victoria, with one more (Vancouver) to be confirmed, to create a province-wide network.

CORE SKILLS / SCOPE OF WORK

A Family Law Training Advisory Committee of family law advocates, lawyers and others has met on a number of occasions to give feedback on the scope of service document, the skills and substantive knowledge advocates must have, the allocation of training time and the content of particular lesson plans. A scope of work document for family law advocates was approved by the Foundation board.

Areas of law covered include primarily family law, including child protection, with some assistance in other overlapping matters (e.g., immigration, criminal, etc.). Family law matters covered include guardianship and parenting time, parental responsibilities, child and spousal support, divorce, protection orders, mobility and relocation, property and debts (limited) and child protection.

The advocates provide a range of services, including legal information, triage and referral, summary advice and support with dispute resolution. The advocates do not represent clients in court hearings but will assist unrepresented litigants by educating them on the court process. The advocates, under the supervision of lawyers contracted to provide that service, will also assist clients in the following ways:

- preparing summaries of facts and memoranda outlining the client's legal issues to make best use of appointments with duty counsel, pro bono or low bono lawyers;
- identifying documentation and evidence the client needs to support positions, providing coaching and interpreting substantive and procedural law and providing tips for legal research and self-advocacy;
- helping to complete forms and prepare documents and letters, including financial statements and fee waiver applications;
- accompanying the client to court to orient, assist and organize, informing them about court room etiquette, providing emotional support and taking notes; and
- explaining orders and agreements, including how they impact the client's rights and obligations.

MEANS TEST

Clients have access to up to two hours of free legal assistance, regardless of income. After that, they are means-tested according to guidelines developed by the Foundation, which includes disclosure of income and assets. Eligible clients receive assistance with applications and appeals for legal aid. Clients able to pay for legal services are referred to the private bar.

SUPPORT AND TRAINING

The Foundation has developed a comprehensive support and training/qualification process to support the advocates.

A grant was made to Rise Women's Legal Centre, and Taruna Agrawal was hired as the Family Law Advocate Support Line (FASL) lawyer in the spring of 2019. Agrawal worked as a family law advocate prior to being called to the bar. She is actively engaged in supporting the advocates and ensuring they have the necessary resources and training. She is active on the family law listserv. In a six-month period, Agrawal has answered 589 calls and provided training sessions to over 500 participants.

All new family law advocates are required to go through a two-week training program. The curriculum, lesson plans and tests were developed with feedback from the advisory committee. Remedial plans have been developed for those who do not successfully complete the tests. A number of advocates attended Sources Community Resources Society's family law advocacy program for shadowing. There is also ongoing training each year, including a three-day conference.

The advocates are supported by their supervising lawyers, the FASL lawyer and by senior advocates — in a mentoring

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Lawyer competence requires Indigenous intercultural competency

MANY LAWYERS WILL recall being asked in first-year law to consider or count how many laws influenced or affected their choices from the moment they woke up to the time they arrived for class. Law is deeply embedded in society. While it may strive to be neutral, law is framed by cultural and social norms. We all bring our own cultural lens to interpreting the law.

In Canada and in British Columbia, the cultural lens that was adopted when colonial laws were put in place was one based on notions of European superiority and Indigenous inferiority. First introduced in 1876, the *Indian Act* aimed to assimilate Indigenous people into "mainstream" European culture and to eliminate their rights, governments, cultures, resources, lands, languages and institutions.

The creation of residential schools became a central element of this policy. The primary objectives of residential schools were to remove children and isolate them from their traditions and culture, in order to assimilate them. When parents refused to send their children back to residential school, the laws and legal institutions worked against them. They were threatened with prosecution. Police were called. Parents faced the possibility of going to jail. Some of them did.

Indigenous peoples' means for pursuing justice in the legal system were severely limited and equality was not afforded to them. The *Indian Act* made it illegal to obtain funds or legal counsel to advance title claims. Until 1951, if an Indian person went to law school, they would automatically lose their Indian status. If Indigenous people wanted to elect new lawmakers, they could not — they would not be able to vote in provincial elections until 1949 and in federal elections until 1960.

These laws and policies have had a lasting legacy for Indigenous families and communities. They have resulted in mass inequalities between them and broader Canadian society. The application of the laws for generation after generation of Indigenous children and families has resulted in a deep and abiding distrust of the law and our legal system.

While law created and reinforced these inequalities, it also has the potential to address past wrongs and drive reconciliation. The Truth and Reconciliation Commission's (TRC's) report acknowledged this potential:

> Until Canadian law becomes an instrument supporting Aboriginal peoples'

empowerment, many Aboriginal people will continue to regard it as a morally and politically malignant force. A commitment to truth and reconciliation demands that Canada's legal system be transformed. It must ensure that Aboriginal peoples have greater ownership of, participation in, and access to its central driving forces.

Lawyers are key participants in the legal system. To contribute to, and be ready for, how reconciliation will change the legal system, lawyers need to learn more about Indigenous laws, the context and history of Canadian laws, how Indigenous peoples have experienced and perceive these laws, and how the actions that lawmakers and others are taking will shape the future of the law. Intercultural competence training helps provide that knowledge.

THE LEGAL PROFESSION'S OBLIGATION

The monopoly to practise law that lawyers enjoy, as the Right Honourable David Johnston once observed, comes with the duty to serve clients with integrity and competence, to improve justice and continuously create the good. To fulfil these duties and responsibilities effectively, one has to be knowledgeable about the history of Canadian laws and legal institutions. The Truth and Reconciliation Commission's findings revealed some aspects about the history of Canadian laws and legal institutions that were and are well-known to Indigenous peoples but had been hidden from view or ignored by many in the mainstream.

When lawyers act without adequate knowledge of this history, it harms the public. The TRC found that survivors of residential schools were re-victimized in the courtrooms, often because lawyers did not have adequate cultural, historical or psychological knowledge to deal with the painful experiences of survivors. The report told of how many survivors did not seek or receive appropriate legal services. The TRC's calls to action called on law societies to ensure lawyers are trained in cultural competency, including the history and legacy of residential schools, the *United Nations Declaration on the Rights of Indigenous Peoples*, treaties and Aboriginal rights, Indigenous law and Aboriginal-Crown relations.

That was more than four years ago. In a recent *Globe and Mail* essay, Senator Murray Sinclair, who served as the TRC's chief commissioner, said most lawyers he encountered in his travels across the country have not read the report or even the summary of the report. He added that lawyers are often the gatekeepers to the justice system, and that "until [lawyers] understand the truth of our history and their role in making change, our country will not be able to move forward."

Senator Sinclair continues to travel across the country to ensure Canadians know their history. "This is because I believe that, while education is what got us into this mess, education is also the tool that will get us out," he said.

The TRC called on Canadians to build a mutually respectful relationship with Indigenous peoples in the country. Patricia Barkaskas, academic director of the Indigenous Community Legal Clinic in the Downtown Eastside, said we have to look beyond the relationship between one lawyer and one client and work to examine the relationship between the legal profession and Indigenous peoples as a whole.

"When we are talking about the legal profession, we are talking about people who had had power over Indigenous peoples for much of history. Having historical knowledge and understanding of Indigenous laws will change the nature of that relationship and make it better," Barkaskas said.

HIGHER QUALITY SERVICE FOR CLIENTS

"Serving the public interest means a knowledge of the facts of history, even if that history does not show our society in a good light," said Michael McDonald, QC, co-chair of the Law Society's Truth and Reconciliation Advisory Committee.

McDonald practises in Indigenous law, commercial real estate and energy and natural resources, and he pointed out that Indigenous interests permeate all areas of the law. "If you're not aware of the internal politics and the history and culture of the people who give you your instructions, how are you going to be a good lawyer?"

Intercultural competence training aims to raise lawyers' awareness of these issues. It asks lawyers to reflect on their own position and attitudes, to think critically about the systems they work in and to deliver legal services appropriately, with an appreciation of clients' social context.

Lawyers who do not practise in areas of law with a high Indigenous client base or involve Aboriginal rights still should be knowledgeable about Indigenous issues, in order to be able to give advice about how those issues may affect a range of areas of law, including human rights, administrative law, Aboriginal and treaty rights, lands and resources, real estate, commercial law, taxation, family (including child welfare) law, wills and estates, intellectual property, civil litigation, immigration and criminal law. To effectively serve clients, all lawyers should be capable of identifying when an Indigenous issue may be relevant.

Indigenous cultural competence also benefits the profession by making it more welcoming to Indigenous lawyers. As revealed in the 2017 mini-documentary, *But I Was Wearing a Suit*, Indigenous lawyers experience racism and face stereotypes, including by other lawyers. In the film, Indigenous lawyers recalled being told to leave the barrister's lounge, asked to hide their Indigenous identity and culture, told they were not "a real lawyer," and faced

BC adopts Declaration on the Rights of Indigenous Peoples Act

British Columbia lawmakers unanimously adopted the *Declaration on the Rights of Indigenous Peoples Act* on November 26. This makes BC the first jurisdiction in Canada to act on the Truth and Reconciliation Commission's call for governments in Canada to adopt and implement the *United Nations Declaration on the Rights of Indigenous Peoples*.

The provincial legislation provides a framework for reconciliation and has potential significance for the administration of justice and the legal profession. Lawyers should be aware that all current laws will be harmonized with UNDRIP principles, and all future laws will be drafted in consultation and cooperation with the Indigenous peoples of British Columbia.

The legislation can be found here.

assumptions of being a client and not a lawyer. These examples demonstrate the need for all lawyers to be aware of how they can be more welcoming and respectful to Indigenous colleagues.

KEEPING UP WITH OUR CHANGING SOCIETY

Reconciliation efforts are underway across the country. The legal profession needs to keep pace. Federal, provincial and municipal governments, government ministries and professionals in a variety of sectors are turning their minds to how they can transform current institutions and systems, including the legal and justice systems, to advance reconciliation. They will look to lawyers for advice on how to achieve their goals.

But even lawyers who do not act for government or others directly involved in reconciliation will need training for a future that has arrived. British Columbia lawmakers unanimously adopted the *Declaration on the Rights of Indigenous Peoples Act*. This makes BC the first jurisdiction in Canada to act on the Truth and Reconciliation Commission's call for governments in Canada to adopt and implement the *United Nations Declaration on the Rights of Indigenous Peoples*. The provincial legislation provides a framework for reconciliation and has potential significance for the administration of justice and the legal profession. Similarly, the federal throne speech promised that the government of Canada would follow BC's lead to implement UNDRIP. Indigenous intercultural competency will help lawyers gain the knowledge, information and skills to participate in this ongoing process and conversation.

For Greg D'Avignon, CEO of the Business Council of British Columbia, Indigenous intercultural training makes good business sense. "Everyone — Indigenous peoples, lawmakers, lawyers and businesses — should prepare to inform, and adapt to, far-reaching changes to the political, legal, economic and social landscape of our country and province," he said.

THE LAW SOCIETY'S ROLE AND REQUIREMENT FOR LAWYERS

The Law Society's role is to protect the public interest in the administration of justice. To carry out this mandate set out in section 3 of the *Legal Profession Act*, the *Act* gives the Benchers the authority to take steps they consider necessary to set and enforce educational requirements and standards for lawyers. This includes administering its admission program, outlining articling requirements, defining lawyer competence and mandating continuing professional development for lawyers.

"The Truth and Reconciliation Commission revealed a gap in legal education in an area that the Benchers have recognized is a core area of competency for lawyers," said Law Society President Nancy Merrill, QC. "We are acting in the public interest by establishing training that provides lawyers with a baseline of education to address this pressing and substantial need."

At their December meeting, the Benchers determined that lawyer competence includes knowledge of the history of Aboriginal-Crown relations, the history and legacy of residential schools and specific legislation regarding Indigenous peoples of Canada. Beginning in 2021, all practising lawyers in BC will be required to take an Indigenous intercultural competency training course that will be provided online and at no cost. The six-hour online course will be finalized in 2020 and will be eligible for continuing professional development credit. Lawyers will have up to two years to complete all of the modules.

More information is available on the Law Society's Truth and Reconciliation initiative web page.❖

Recognizing excellence ... from page 8

> *cost-effectiveness in collaborative dispute resolution processes. She has pioneered ways for lower income families throughout BC to access justice in family disputes."*
>
> – Sarah Westwood, chair, Excellence in Family Law Award selection committee

PRO BONO AWARD

The 2019 recipient, Claire E. Hunter, QC, was called to the bar in 2010 and practises in Vancouver. She has taken on countless pro bono files throughout her career, while at the same time building a busy commercial litigation and administrative law practice. She is currently the president and chair of the Access Pro Bono Society of British Columbia.

In addition to her own pro bono work, Hunter has taken on formal leadership roles with the Canadian Bar Association's national Pro Bono Committee, Access Pro Bono Society of BC, The Advocates' Society's Access to Justice Taskforce, and the Law Society's Access to Legal Services Advisory Committee. She is a frequent speaker and writer on pro bono issues, and she chaired the National Pro Bono Conference when it was held in Vancouver last year.

> *"In addition to working on pro bono files consistently throughout her career, Claire has played a longstanding role in fostering support for pro bono work in BC and is a role model within the profession for integrating pro bono work with a successful career in private practice."*
>
> – Michelle D. Stanford, QC, chair, Pro Bono Award selection committee ❖

Law Foundation: Family law ... from page 9

role and through the listserv. There will be ongoing training for new supervising lawyers to discuss scope of services, supervision requirements and expectations, best practices and conflicts, etc. New materials are being developed on issues such as privilege, duty to report child abuse and conflicts. The advocates are on a family law advocacy listserv, where they can communicate with each other to discuss issues and strategies. The Foundation has also purchased materials, such as the Continuing Legal Education Society's *Annotated Family Practice Manual* and a subscription to the DivorceMate software.❖

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

New client verification and source of money requirements

IN THIS ARTICLE, I focus on some of the changes to the client identification, client verification and source of money rules that will come into effect on January 1, 2020. The changes to the rules are designed to reflect the federal legislative objectives under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*,[1] at the same time as reflecting the rights of clients and obligations of lawyers. Lawyers should familiarize themselves with the actual rules and pay close attention to the definitions. The Federation of Law Societies has developed a booklet, *Guidance for the Legal Profession*, which details measures that lawyers can take to implement rules and avoid facilitating or participating in money laundering or terrorist-financing activities. Here, I pay particular attention to what lawyers may do to implement Law Society Rules 3-98 to 3-110 (Part 3, Division 11 – Client Identification and Verification).

OVERVIEW

The rule changes that come into effect on January 1, 2020 modify or add to what lawyers are required to do in the following areas:

1. Client identification (Rule 3-100);
2. Verification of the client's identity where the lawyer is retained in respect of a "financial transaction" (Rules 3-102 to 3-106);
3. Obtain information from the client about the source of money and recording the information, with the applicable date (Rules 3-102(1)(a), 3-103(4)(b)(ii) and 3-110(1)(a)(ii));
4. Maintain and retain records (Rule 3-107);
5. Monitor the lawyer-client professional business relationship periodically, and keep a dated record of the measures taken and information obtained (new Rule 3-110);
6. Withdraw if you know or ought to know you would be assisting in fraud or other illegal conduct (Rule 3-109).

Some key points to keep in mind about what these rule changes entail are as follows:

- A lawyer's general obligations are explained in new Rule 3-99(1.1).
- The standards for identification and verification – different concepts with differing obligations – have changed.
- There are new requirements to obtain information about a client's source of money.
- Also new is a requirement to monitor the professional business relationship with clients on a periodic basis.
- Some broadly defined terms are new or amended (Rule 3-98).
- The methods for verification have expanded (Rule 3-102).
- A photo identification requirement has been added (Rule 3-102(1) and (2)(a)).
- Rules to verify children under 15 years of age have been added (Rule 3-102(5) and (6)).
- Requirements to obtain and confirm the accuracy of information regarding an organization's ownership, control and structure, directors, shareholders, trustees, beneficiaries, settlors of a trust and related record-keeping have been expanded (Rule 3-103).
- The timing for verification of organizations has been decreased to 30 days (Rule 3-106).
- The commissioner and guarantor provisions for attestations in Canada have been rescinded.
- Agents may be used inside and outside of Canada (Rule 3-104).
- An agent *must be used* to verify client identity if the client is not in Canada and not physically present before the lawyer (Rule 3-104).
- The responsibilities of a lawyer may be fulfilled by the lawyer's firm, including members or employees of the firm wherever located (Rule 3-99(3)).

[1] In 2015 the Supreme Court of Canada struck down specific provisions of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* and regulations, finding the provisions violated *Charter* protections against unreasonable search and seizure and rights of security of the person. As a result, lawyers are exempt from reporting clients to FINTRAC.

- Record-keeping requirements have been expanded (Rule 3-107).
- Some previous exemptions from verification have been rescinded (Rule 3-101).

WHEN THE CLIENT ID AND VERIFICATION RULES APPLY

With limited exceptions, the rules apply when you are retained by a new or existing client to provide legal services (Rule 3-99). Being retained means that you have agreed to act. Being retained is not necessarily limited to the circumstances of having received a retainer in trust. *Code of Professional Conduct for British Columbia* rule 3.6-9 states:

> If a lawyer and client agree that the lawyer will act only if the lawyer's retainer is paid in advance, the lawyer must confirm that agreement in writing with the client and specify a payment date.

The rules do not include a definition of legal services. In most instances, it will be obvious if you are providing a legal service (e.g., providing legal advice, drawing a will) and when you are not (acting as an arbitrator or mediator). If you are unsure if you are providing a legal service, refer to the definition of "practice of law" in the *Legal Profession Act* or seek professional legal advice.

A LAWYER'S GENERAL OBLIGATIONS

Lawyers are bound by strict "know your client" rules, in order to ensure that they are providing advice only to bona fide clients whose identity can be reliably ascertained.

New Rule 3-99(1.1) sets out a lawyer's overarching obligations to know the client:

> The requirements of this division are in keeping with a lawyer's obligation to know his or her client, understand the client's financial dealings in relation to the retainer with the client and manage any risks arising from the professional business relationship with the client.

It is important, therefore, for a lawyer to know who the client is and understand the purpose of the retainer. As general guidance, it would be prudent to take documented, traceable steps to obtain from the client and record, with the applicable date, information about the source of money and verify a client's identity, when required. Understand and substantiate the reasonableness of a "financial transaction" (broadly defined in Rule 3-98) that you facilitate. Periodically monitor your professional business relationship with the client when retained in respect of a financial transaction to identify any changes in circumstances.

If verification is not clearly required, consider the risks and err on the side of caution. Lawyers' risks can vary considerably, based on the client, third-party involvement, the country or geography involved and the legal services to be provided. Be keenly aware that there are various federal laws by which Canada prohibits dealing with some specific foreign countries, individuals or entities or imposes limitations (e.g., see the *Special Economic Measures Act*, the *Justice for Victims of Corrupt Foreign Officials Act*, and the *United Nations Act*). The *Criminal Code* applies measures regarding terrorist entities. Lawyers must ensure that they do not improperly facilitate financial transactions for any listed or sanctioned individuals or groups and incorporate measures into their due diligence for this. Canada's Global Affairs and Public Safety Canada provide updated web resources that you may consult.

Umbrella Rule 3-99(1) – *New*

Do not act for a client, or if you are already acting, withdraw your services if you know or ought to know that you would be assisting a client in fraud or other illegal conduct (Rules 3-109 and 3-110 and Code rules 3.2-7 and 3.2-8). At all times, practise within your comfort zone and competencies (Code sections 3.1 and 3.2).

THE DIFFERENCE BETWEEN IDENTIFICATION AND VERIFICATION

Identification and verification are separate but related concepts. The concepts themselves are not new but the distinction bears repeating. Understanding how they differ can not only save you and your clients time and expense (if you verify identity when it is unnecessary), but can keep you from being on the wrong side of compliance (e.g., if you improperly rely on a scan of a driver's licence for verification).

Identification: Identification refers to the basic information that you must obtain and record with the applicable date about your "client" at the time you are retained to provide legal services. Rule 3-100 sets out the minimum information that you must obtain about individuals and organizations, unless there is an applicable exemption (Rule 3-99(2)). Note that the standard for obtaining the information is more stringent. The current standard of "must make reasonable efforts to obtain and, if obtained, record" will become "must obtain and record, with the applicable date." Information can be taken in a variety of ways (phone, email, etc.), and you do not have to physically meet with the client to *identify* the client. However, information and any documents obtained for identification purposes must be retained (Rule 3-107).

Verification: Verification requires more effort than simple identification. Verification of identity is required, with limited exceptions, if there is a "financial transaction" (defined as the receipt, payment or transfer of money on behalf of a client or giving instructions on behalf of a client in respect of the receipt, payment or transfer of money). Verification involves obtaining valid, original and current documents and valid and current information from independent and reliable sources to confirm that your "client" (as broadly defined) is who they say they are. Note that on January 1, 2020 the current verification standard of "must take reasonable steps to verify the identity" changes to the more stringent "must verify the identity." See Rules 3-102 to 3-106 and the Federation's *Guidance for the Legal Profession*. Verification records must be retained (Rule 3-107).

In some circumstances, an exemption from verification may apply, such as for a

lawyer who only provides legal services to an employer as in-house counsel or as an agent to another BC lawyer or member of a governing body who is authorized to practise law in another Canadian jurisdiction and who has complied with the Law Society's identification and verification requirements or equivalent provisions. However, consider the risks and err on the side of caution. Rather than looking for a way out of verifying your client's identity, you should be confident about who your client is, what the intent and purpose of the legal services are, that you know the source of money in respect of a financial transaction and that it is proper for you to act.

Source of money information – new to verification: A key new component of verification is that lawyers must also obtain information from the client and record, with the applicable date, information about the source of "money" when a lawyer provides legal services in respect of a "financial transaction" (Rules 3-98 (Definitions), 3-102(1)(a), 3-103(4)(b)(ii) and 3-110). "Money" is broadly defined in Rule 3-98.

Understanding the source of money and its appropriateness is the crux of anti-money laundering. Lawyers must understand the importance of their role as gatekeepers of their trust accounts and ensure that they make sufficient inquiries. You have a positive duty to make inquiries about financial transactions that you facilitate. This may include obtaining supporting documentation if there are suspicious circumstances (Code rule 3.2-7) or when it is required by the trust accounting rules (Part 3 - Division 7). Some relevant information that a lawyer should obtain about the source of money is as follows:

- the payer's full name, occupation and contact information;
- the relationship of the payer to the client (the payer may be the client);
- the date on which the money was received by the lawyer from the payer;
- the economic activity or action that generated the money (e.g., bank loan, savings from salary, settlement funds);
- the form in which the money was received by the lawyer (e.g., cheque, bank draft);
- the full name and address of all financial institutions or other entities through which the payer processed or transmitted the money to the lawyer;
- any other information relevant to determining the source of money.

Lawyers will need to obtain and record information about the source of money early on in the retainer as part of the client identification and verification process, as it is a key component to anti-money laundering and preventing engagement in any activity that assists in or encourages any dishonesty, crime or fraud. If you have "money" in trust in December 2019 for a "financial transaction" that will complete in 2020, you are expected to obtain information from the client about the source of "money". See the Fall 2019 *Benchers' Bulletin* (pp. 14-17) regarding the distinction of Division 11 from the trust accounting requirements. Also see the Discipline Advisories Private Lending and Lawyers are Gatekeepers.

A key new component of verification is that lawyers must also obtain information from the client and record, with the applicable date, information about the source of "money" when a lawyer provides legal services in respect of a "financial transaction."

Monitoring – new to verification: New Rule 3-110 requires you to monitor your professional business relationship with a client while retained in respect of a financial transaction. This includes long-standing clients. You must periodically assess whether the information that you have obtained, the client's information about their activities, the source of money used in the financial transaction and the client's instructions are consistent with the purpose of the retainer. Another purpose of monitoring is to assess whether there is a risk that, by continuing to act for the client, you may be assisting in or encouraging dishonesty, fraud, a crime or other illegal conduct. Lawyers must record, with the applicable date, the monitoring measures they have taken and the information obtained, and retain the records for the period required in Rule 3-107.

UNDERSTANDING THE DEFINITIONS

In order to know your obligations and any applicable exemptions, an understanding of the definitions is crucial and could save you time and expense, or from being offside of a rule.

Rule 3-98(1) has 12 defined terms that are used throughout Division 11. Some terms are broadly defined and are different from common usage. Defined terms for "disbursements," "expenses" and "professional fees" were added and effective on July 12, 2019. The definitions for "money" and "securities dealer" were widened and the definition for "public authority" was rescinded and replaced with the more succinct definition of "public body." These changes were made in July 2019 but are effective on January 1, 2020.

The definitions are critical to whether you are not required to verify a particular client's identity in circumstances where there are no suspicious circumstances that would inspire you to undertake enhanced due diligence (e.g., the verification rules do not apply to a client that is a "financial institution" or an individual who instructs the lawyer on behalf of one). If you verify the client's identity where the definitions and circumstances do not require it, you may expend unnecessary effort and expense, including mandatory record-keeping and retention obligations.

Equally important, you can easily be offside of a rule if you overlook a term's meaning. For example, if you know the meaning of "financial transaction" you will understand that even if money is not deposited into your trust account, there still may be a financial transaction and thus a requirement to verify a client's identity. By understanding the definitions of "financial transaction" and "money," you will know that giving instructions on your client's behalf with respect to a share transfer may be a financial transaction. While all the definitions are important, pay special attention to the broadly defined terms "client," "financial transaction" and "money."

KNOW YOUR CLIENT

The definition of "client" deserves further attention. The term as defined has a broad meaning and is not always limited to the person who retains you. Pay close

attention to the definition to determine who you must identify and verify. Rule 3-98(1) provides that in Division 11,

> **"client"** includes
>
> (a) another party that a lawyer's client represents or on whose behalf the client otherwise acts in relation to obtaining legal services from the lawyer, and
>
> (b) in Rules 3-102 to 3-105, an individual who instructs the lawyer on behalf of a client in relation to a financial transaction.

What this means is that you may need to question the client to determine if they represent or are acting for another party in relation to obtaining legal services from you. Making inquiries will help to clarify situations where it may not be obvious that someone else is pulling the strings. If someone else falls within the definition of "client," you are required to apply the rules in relation to that party as if they are your client too. Below are some examples.

Organization client

If you act for an "organization," the organization is obviously your client – but, in addition and for the purpose of Division 11, your client is also the individual who is instructing you on behalf of the organization in relation to a financial transaction.

Using a company as an example, you are required to identify and verify the identity of both the company and the instructing individual (Rule 3-98 definition of "client" and Rule 3-102). A lawyer who provides legal services in respect of a financial transaction must verify an organization's identity promptly and, in any event, within 30 days (a change from 60 days). The timing for verifying the instructing individual is earlier, i.e., at the time that a lawyer provides legal services in respect of a financial transaction. (Note that if your client is a "financial institution," "public body" or "reporting issuer," you are not required to verify the identity of the client nor the individual instructing you on behalf of the client (Rule 3-101).

Requirement to identify directors, shareholders and owners

If you provide legal services for a company in respect of a financial transaction, in addition to verifying the identity of the company and the individual instructing you on behalf of the company, you must *identify* the directors by obtaining and recording all of their names with the applicable date (other than an organization that is a "securities dealer"). Rule 3-103 has been expanded so that, in addition, you must make reasonable efforts to obtain, and if obtained, record with the applicable date certain information pertaining to shareholders, ownership, control and structure of a company, and take reasonable measures to confirm the accuracy of the information obtained. Because a money launderer may try to obscure his or her identity through beneficial ownership, the requirements include making reasonable efforts to obtain and record beneficial ownership information: the names and addresses of all persons who own, directly or indirectly, 25 per cent or more of the organization or the shares of the organization.

Lawyers will need to obtain and record information about the source of money early on in the retainer as part of the client identification and verification process, as it is a key component to anti-money laundering and preventing engagement in any activity that assists in or encourages any dishonesty, crime or fraud.

If those owners are companies too, you must continue with your efforts to obtain information about the natural person, not stopping at the entity level. Refer to Rule 3-98(2) to determine, for the purposes of Division 11, if a person controls an organization. Rule 3-103 is very detailed so read it carefully and take note of the requirements to obtain and record information with respect to trustees and beneficiaries and settlors of a trust.

Other examples

If your client is a real estate developer selling condominiums and you are receiving deposits in trust from purchasers who are not your clients, you should endeavour to make sure that the purchasers are aware that you are not their lawyer if they are unrepresented (see Code rule 7.2-9). While the purchaser may not be your "client" and you are not required to verify their identity pursuant to Rule 3-102, you may wish to do so for other reasons. For example, you still need to be concerned about the source of money in respect of the financial transaction, and if a deposit must be returned to a purchaser, it could be difficult to determine if the person claiming the deposit is the same person who provided the money originally if you did not verify their identity and they are unrepresented.

If an attorney appointed under a power of attorney asks you to act on a financial transaction, the attorney is representing another party (the donor or adult) on whose behalf the attorney is acting. Accordingly, the definition of "client" would normally require you to verify the donor's identity as well as the attorney. For example, if the donor has executed a power of attorney allowing the attorney to execute land transfer documents while he or she is on holidays, the donor's identity must be verified before the financial transaction takes place. When drafting a power of attorney, complete the verification process on the donor at or before the time of execution. You will want to take sufficient steps to ensure that the power of attorney and the attorney are legitimate.

If your client is a private lender or a borrower from a private lender, there may be an increased risk that criminals will attempt to use this type of transaction to launder the proceeds of crime. Read the Discipline Advisory Private lending (April 2, 2019), make inquiries and, before acting, satisfy yourself that the loan and the parties are legitimate.

VERIFYING AN INDIVIDUAL'S IDENTITY

The simplest method to verify an individual's identity, including verifying an individual acting on behalf of an organization, is set out in Rule 3-102(2)(a)(i). You would physically meet with the individual who would produce their valid, original and current identification document in your presence. The document must contain the individual's name and photograph, and it must be issued either by the government of Canada, a province, a territory or a foreign government. A document issued by a municipality is not acceptable. You are required to use the document to compare the photograph with the individual before you. Viewing a scanned image of the document does not fulfill the requirements,

nor does viewing the document through a video conference.

Some examples of common photo identity documents acceptable for verification purposes are a Canadian passport, Canadian permanent resident card, Secure Certificate of Indian Status, BC driver's licence, BC enhanced driver's licence and BC Services Card.

Two other methods of verifying an individual's identity are the credit file method (Rule 3-102(2)(a)(ii)) and the dual process method (Rule 3-102(2)(a)(iii) and (4)). An electronic image of a document is not a document or information for the purposes of these methods (Rule 3-103(3)). For more information on these methods, see the Federation's *Guidance for the Legal Profession*.

USING AN AGENT TO VERIFY IDENTITY

Rule 3-104 permits a lawyer to use an agent to obtain the information required under Rule 3-102 (Requirement to verify client identity) on the lawyer's behalf when the client is inside Canada or outside of Canada. (The guarantor provisions regarding clients inside Canada under subrules (2) to (4) have been rescinded.) The lawyer and the agent must have an agreement or arrangement in writing to comply with the rule.

A lawyer must use an agent if the client is not present in Canada and is not physically present before the lawyer. A lawyer may be able to meet with a client outside of Canada before the financial transaction and, in such case, may not require an agent. Similarly, the responsibilities of a lawyer may be fulfilled by the lawyer's firm, including members or employees of the firm wherever located (Rule 3-99(3)). An agent agreement is on the website.

Know your agent. Keep in mind that the agent is your agent, not the client's agent. Be careful who you are dealing with. The agent should be someone reputable who takes the verification of client identity seriously. Ensure the agent thoroughly understands what you require them to do and that they will carry out the work and provide you with all of the required information under the agreement or arrangement. The agent does not have to be a lawyer; you might retain a suitable accountant, notary or other professional. If the client is outside of Canada, some embassies or consulates have been known to occasionally provide such services. Be aware that a criminal could try to persuade a lawyer to use a certain agent who is a part of the criminal's scheme.

EXEMPTIONS FROM SOME REQUIREMENTS

Rule 3-99(2) provides that rules relating to identification, verification, record-keeping and retention, and monitoring (Rules 3-100 to 3-108 and 3-110) do not apply in some specific situations (e.g., in the form of pro bono summary advice if no financial transaction is involved). It should be noted, however, that in these same situations Rule 3-109 (Criminal activity, duty to withdraw) still applies (as do Code rules 3.2-7 and 3.2-8).

Rule 3-101 provides for some specific exemptions only with respect to the verification requirements (Rules 3-102 to 3-106 do not apply). The rules with respect to identification, record-keeping and retention, retention for a matter prior to December 31, 2008, criminal activity, duty to withdraw and monitoring still apply.

Read Rule 3-101 carefully. Note that two exemptions from the verification requirements under the current rules have been rescinded: (1) when a lawyer pays or receives money pursuant to an order of a court or other tribunal; and (2) as a settlement of any legal or administrative proceeding.

FURTHER INFORMATION

For more information regarding anti-money laundering, see the Fall 2019 *Benchers' Bulletin* (pp. 12-17) and the Summer 2019 *Benchers' Bulletin* (pp. 10-14). The agent agreement, FAQs and the Federation's *Guidance for the Legal Profession* (February 19, 2019) are also useful resources. More resources will be forthcoming, including a further update to the client identification and verification procedure checklist (at this time, current to September 1, 2019).

You are welcome to contact Practice Advisor Barbara Buchanan, QC (604.697.5816) regarding questions about client identification and verification or the content of this article. Please contact an auditor for trust account and general account questions (trustaccounting@lsbc.org or 604.697.5810). ❖

Services for lawyers

Law Society Practice Advisors

Barbara Buchanan, QC
Brian Evans
Claire Marchant
Edith Szilagyi

Practice advisors assist BC lawyers seeking help with:

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

Tel: 604.669.2533 or 1.800.903.5300

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

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

◆

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Tel: 604.685.2171 or 1.888.685.2171

◆

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

Conduct reviews

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

CLIENT ID AND VERIFICATION

Compliance audits resulted in several similar conduct reviews involving the client identification and verification rules.

A lawyer failed to take reasonable steps to verify the identity of her clients in two files involving face-to-face financial transactions, as required by Law Society Rule 3-102. On one file, a real estate transaction, the lawyer had previously done work for one of the clients and had seen his original marriage certificate and retained a copy. She had no previous relationship with the other client on that file. On the other file, an estate matter, the lawyer had known the client personally for approximately 37 years. She took no steps to verify the client's identity until the issue was flagged during the compliance audit, at which time she obtained a notarized copy of the client's driver's licence and health card. (CR 2019-31)

A lawyer failed to comply with client identification and verification rules in two real estate matters. The lawyer failed to enter into a written agreement or arrangement with the notaries who obtained the information required to verify the identity of his clients who were not present in Canada and for whom he acted on a non-face-to-face financial transaction, contrary to Law Society Rule 3-104. The lawyer was generally aware of the rules but not specifically that Rule 3-104(5) required that he enter into a written agency agreement in matters where the client is not present in Canada.

Prior to the compliance audit that revealed the rule breaches, the lawyer followed the procedure for client identification and verification set out in the Practice Management Course and had prepared a checklist based in part on the Law Society's client identification and verification checklist. However, because it was unusual for the lawyer to have clients that were not present in Canada, neither the firm's procedure nor the checklist included any reference to the requirement to enter into a written agency agreement in those circumstances. The lawyer updated the firm's procedure for client identification and verification to add a step that required the members of the firm to sign off on its client identification and verification checklist for each file and stressed to the firm's staff the importance of complying with all requirements. (CR 2019-32)

A lawyer failed to verify the identity of his client in accordance with the requirements set out in Law Society Rule 3-104(5) for a non-face-to-face financial transaction when the client resided outside of Canada. The lawyer was unaware of the need for an agency agreement for clients located outside of Canada. The lawyer has since reviewed and discussed Rule 3-104(5) with all employees of the firm and has implemented the client identification and verification checklist, to be completed by the responsible lawyer on every file.

The same lawyer also failed to file and remit GST in full to the Canada Revenue Agency, contrary to rule 7.1-2 of the *Code of Professional Conduct for British Columbia*. The lawyer explained that the late filings of GST were due to a turnover of staff, when the firm's bookkeeper left unexpectedly. The lawyer has since hired an external bookkeeper, who is also a Chartered Professional Accountant, and has assigned two staff members to work with the accountant for coverage and continuity. (CR 2019-33).

FAILURE TO REMIT

A lawyer failed to remit GST, payroll deductions and the trust administration fee, in breach of rule 7.1-2 of the *BC Code*. The lawyer was paying his firm's commercial debts, rather than the Canada Revenue Agency and Law Society, and he did not monitor monthly finances. The lawyer acknowledged the breach, and the tax arrears and penalties have now been paid. The lawyer and his firm have since hired a bookkeeper and set up a savings account in which to place the estimated monthly tax and payroll deduction payments. A conduct review subcommittee recommended the lawyer set up a business line of credit as a back-up to the firm's savings account to pay future tax obligations. (CR 2019-34)

CONDUCT UNBECOMING

A lawyer and his former wife were discussing their personal family law dispute in the lawyer's car when the discussion escalated into an argument. The lawyer pushed his former wife out of the car, causing her to fall to the ground and suffer minor bruising. The lawyer's conduct was considered conduct unbecoming a lawyer, contrary to rule 2.2-1 of the *BC Code* and section 1(1) of the *Legal Profession Act*. The lawyer acknowledged his misconduct and has completed a group anger management course, attended a counsellor on a scheduled basis and continued under the care of a psychiatrist. The lawyer has adopted and applied some of the anger management techniques he learned in the program and has taken steps to minimize his contact with his former wife. (CR 2019-35)

REFUND OF TRUST FUNDS

A lawyer accepted $10,000 cash into his trust account on an immigration matter and refunded $3,000 by trust cheque, contrary to Law Society Rule 3-59(5). In addition, the lawyer failed to state that his firm had accepted $7,500 or more in cash on his trust report. The lawyer misunderstood the no-cash rule and has acknowledged his error. The lawyer and his staff have now familiarized themselves with the Trust Accounting Handbook and created a cash-receipt flow chart that all staff are aware of and are to review on a regular basis. The lawyer has also reviewed Rule 3-59(5) with his bookkeeper to avoid a similar trust breach in the future. (CR 2019-36)

TRUST ACCOUNTING OBLIGATIONS

A compliance audit revealed small balances were being transferred from individual client ledgers to a firm's trust float ledgers, contrary to Law Society Rule 3-64. The firm's bookkeeper was reallocating the residual funds from the individual client ledgers for the purposes of zeroing out the client trust account so the files could be closed. A total of $140.51 was transferred from 26 client files to the float ledger. The lawyer acknowledged that he failed to properly supervise his staff, contrary to rule 6.1-1 of the *BC Code*. The lawyer has taken numerous remedial steps including implementing new firm processes and software to ensure this practice no longer occurs. The bookkeeper has resigned from the firm and the lawyer has returned all funds to the 26 clients. (CR 2019-37)

A compliance audit revealed a lawyer had withdrawn residual trust balances totalling $2,407.72 on 35 client matters, purportedly as payment of disbursements, without delivering accounts to the clients. On six other client matters, his bookkeeper transferred residual trust balances totalling $0.76 to the trust float when the firm had no entitlement to those funds. Of the 41 trust withdrawals, the lawyer had no entitlement to $2,318.65 of the transferred funds, contrary to Law Society Rule 3-64(1). A conduct review subcommittee advised the lawyer to be more vigilant in ensuring the proper transfer of funds from trust. The lawyer acknowledged his lack of proper oversight of his staff resulting in the trust issues and made changes to ensure his firm's compliance going forward, including replacing his bookkeeper, reducing his practice by taking no new family law matters and hiring a new lead conveyancer.

The lawyer had also been allowing his conveyancing assistants to use his Juricert password to affix his digital signature to documents filed in the land title office, breaching Law Society Rule 3-96.1 and rule 6.1-5 of *BC Code*. He has now changed his Juricert password and implemented a system whereby his staff sends all documents to him electronically so he can personally affix his signature. (CR 2019-38)

JURICERT PASSWORD

A compliance audit revealed that a lawyer disclosed his Juricert password to two of his conveyancing assistants and permitted them to affix his personal digital signature on documents filed in the land title office, including property transfer tax returns, where the funds were paid out of his trust account. The lawyer's conduct was contrary to his Juricert agreement, Part 10.1 of the *Land Title Act*, Law Society Rules 3-64(8)(b) [now Rule 3-64.1(6)] and 3-96.1 and rule 6.1-5 of the *BC Code*. A conduct review subcommittee reminded the lawyer that the Law Society has published information in the *Benchers' Bulletin* reminding lawyers of their obligations regarding their digital signatures and use of their Juricert passwords. The lawyer has changed his Juricert password, keeps it secure from his staff and personally affixes his signature on all documents. (CR 2019-39).

RUDENESS

Following the completion of an estate file, a lawyer sent an email to one of the beneficiaries in which he used language, including name calling, that was beyond mere rudeness. The lawyer's conduct in acting in an inflammatory, rude and undignified manner was contrary to a lawyer's obligations under rules 7.2-1 and 7.2-4 of the *BC Code*. The lawyer acknowledged that he became emotionally engaged with his clients, became angry with the beneficiary's conduct and allowed his personal feelings to inform his professional conduct. The lawyer apologized to the beneficiary and feels remorseful. He agreed with a conduct review subcommittee's recommendations to maintain an appropriate professional distance from clients, to not allow his emotions to override his professional behaviour and to reflect on email messages before sending. (CR 2019-40)

FAILURE TO RESPOND

A lawyer was retained to represent her client in family law proceedings against her estranged husband. After the lawyer did not prepare a response for an upcoming application, the client terminated the retainer. The client and her new counsel contacted the lawyer more than 12 times during a four-month period requesting the transfer of the file and an accounting of the client's trust funds. The file was delivered to the new counsel only after the client submitted a complaint to the Law Society and the new counsel filed a petition to court seeking delivery. The lawyer's failure to respond and to be punctual in finalizing accounts and transferring the file were contrary to rules 7.2-5 and 3.7-9 of the *BC Code*. The lawyer has addressed her conduct by reducing her file load and being selective about the cases she is taking. A conduct review subcommittee recommended that she join the Canadian Bar Association family law section and be referred to the Practice Standards Committee for ongoing advice and recommendations. (CR 2019-41)

UNWILLINGNESS TO RECOGNIZE MISCONDUCT

The relationship between a lawyer and his client in a bodily injury claim deteriorated to the point where his client terminated the retainer. Upon settlement of the former client's claim with new counsel, the lawyer placed a solicitor's lien on the proceeds and was paid his fees pursuant to a consent order. The former client made a complaint to the Law Society, which the lawyer claimed constituted malicious prosecution. He believed he was entitled to a further certificate of fees for payment of damages and threatened to commence an action against the client and new counsel. A conduct review subcommittee informed the lawyer that his conduct may be contrary to rules 5.1-2(a), 7.2-2 and commentary [2] and [3] of 7.2-1 of the *BC Code*. Apart from acknowledging that his allegation of malicious prosecution was unwarranted, the lawyer made no admission of any misconduct. Given the lawyer's failure to acknowledge the inappropriateness of his conduct, the subcommittee recommended that he be referred to the Practice Standards Committee or be issued a citation. (CR 2019-42)

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Discipline digest

BELOW ARE SUMMARIES with respect to:

- Rosario Cateno Di Bella
- George Eric Aleksejev
- Daniel Bruce Geller
- Amarjit Singh Dhindsa
- James Edward Turner
- Donald Alexander Boyd
- Jeffrey Stephen Lowe
- Baldev Singh Ghag

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

ROSARIO CATENO DI BELLA

Victoria, BC
Called to the bar: September 10, 1980
Discipline hearing: June 12, 2019
Panel: Lindsay R. LeBlanc, chair, Jeevyn Dhaliwal, QC and Mark Rushton
Decision issued: September 5, 2019 (2019 LSBC 32)
Counsel: Henry C. Wood, QC for the Law Society; Craig P. Dennis, QC for Rosario Cateno Di Bella

AGREED FACTS

In 2014 multiple complaints about Rosario Cateno Di Bella's conduct led to a practice review, which resulted in recommendations aimed at improving file organization and timely communication with clients. Further subsequent complaints led to another practice review, which revealed Di Bella had more than 270 active files and found a repetitive pattern of delay in communicating. In November 2016 Di Bella agreed to an undertaking not to take on new matters. In 2017 he opened 33 new files, and he failed to list these in audit documents submitted to the Law Society.

In September 2017 Di Bella was retained to pursue a committeeship for a client's ailing mother. The client's mother had suffered a stroke that left her unable to look after her affairs, and the client expressed some urgency due to concern that the mother's estranged husband was taking advantage because there was no power of attorney in place. The mother and her estranged husband still shared a bank account, and the estranged husband was still on title to the couple's house. Di Bella failed to respond to numerous communications or responded without answering questions about the status of the file. In March 2018 Di Bella told the client he was too busy to help her and offered to find alternate counsel. He failed to forward contact information regarding other counsel, failed to confirm that he was no longer acting and took no steps to transfer the file. Another lawyer phoned Di Bella on April 25, 2018 and did not receive a response until May 10, 2018. The client made a complaint to the Law Society, and after the Law Society contacted Di Bella, the file was delivered to the other lawyer.

ADMISSION AND DETERMINATION

The panel accepted Di Bella's admission that he committed professional misconduct. In determining the appropriate disciplinary action, the panel considered Di Bella's practice reviews and subsequent limitations on his practice. The panel also considered an extensive record of professional service. It considered the impact Di Bella's conduct had on the client but did not find that Di Bella was motivated by a concern for revenue.

DISCIPLINARY ACTION

The panel ordered that Di Bella:

1. be suspended for two months commencing October 1, 2019; and
2. pay costs of $9,000.

GEORGE ERIC ALEKSEJEV

Burnaby, BC
Called to the bar: July 13, 1982
Discipline hearing: March 7, 2019
Panel: Tony Wilson, QC, chair, Clarence Bolt and Carol Hickman, QC
Decision issued: September 13, 2019 (2019 LSBC 34)
Counsel: Mandana Namazi for the Law Society; David J. Taylor for George Eric Aleksejev

AGREED FACTS

In acting for the buyer in a real estate transaction, George Eric Aleksejev agreed to an undertaking that he would not attempt to register the transfer documentation until he held in his firm's trust account sufficient funds that, together with the proceeds of any new mortgage, would allow his firm to complete this transaction in accordance with the contract of purchase and sale.

On the closing date, Aleksejev electronically registered the Form A Freehold Transfer prior to receiving from the buyers all the funds that he required to allow him to complete the transaction. When counsel for the seller discovered that registration of the Form A Freehold Transfer had occurred prior to receipt of all funds necessary to close the transaction, Aleksejev offered to withdraw the Form A Freehold Transfer. Later that day, the buyers provided Aleksejev with the funds required.

ADMISSION AND DETERMINATION

Aleksejev admitted, and the panel agreed, that his conduct constituted professional misconduct. In determining appropriate disciplinary action, the panel considered the importance of undertakings to the legal profession and to public confidence in the legal system and the rule of law. It also considered that, although this was a serious breach,

the transaction did close without a loss or delay and that Aleksejev did not gain from the breach.

DISCIPLINARY ACTION

The panel ordered that Aleksejev pay a fine of $7,000.

DANIEL BRUCE GELLER

West Vancouver, BC

Called to the bar: May 15, 1974

Discipline hearing: July 23, 24 and 25, 2018 and June 24, 2019

Panel: Jennifer Chow, QC, chair, Eric V. Gottardi and Lance Ollenberger

Decision issued: December 27, 2018 (2018 LSBC 40) and September 20, 2019 (2019 LSBC 35)

Counsel: Michael Shirreff and Elizabeth Allan for the Law Society; Daniel Bruce Geller on his own behalf

FACTS

Daniel Bruce Geller had acted as a criminal defence lawyer in British Columbia for an individual on multiple occasions over the years. In March 2015 the individual was arrested in Whitehorse, Yukon. Geller had practised law in Yukon from time to time, having been a member of the Law Society of Yukon or granted permission to practise law on a case-by-case basis. At the time of the arrest, Geller was suspended by the Law Society of Yukon from practising law in that jurisdiction.

The individual was detained at the Whitehorse Correctional Centre. In support of his request to have himself added to the individual's telephone contact list, Geller told correctional facility staff that he was the individual's lawyer. In the following weeks and months Geller spoke with the individual on several occasions.

Geller also called several institutions in Yukon in an attempt to seek help for the individual. He contacted the Law Society of Yukon, saying he was having trouble getting representation for his former client and seeking to have legal aid counsel appointed. Geller also called the Crown to inquire about charges and bail, stating that he would not be acting for the individual. Geller called the federal prosecutor in Yukon asking for assistance, saying he was concerned for the safety of his former client and had been unable to get him representation.

Geller arranged with the individual for a payment of $5,000 to be made to Geller. Geller met with the individual's girlfriend, who provided him with a $5,000 bank draft. Geller deposited the draft in his general account.

Geller visited the Whitehorse Correctional Centre, identifying himself as the individual's lawyer. Geller advised the individual that he was there as a "friend" and that he was not able to practise law in Yukon.

DETERMINATION

The panel found that in making phone calls to the Crown, the Yukon Legal Services Society and the Yukon Law Society he was simply trying to get help for a former client, but that when he advised the Whitehorse Correctional Centre to add his name to the inmate phone list as the individual's counsel, Geller held himself out as counsel for the individual.

Further, whether Geller was giving specific advice about the individual's right to silence or more general advice about his situation in jail, he was giving legal advice in relation to the issues the individual was facing in Yukon.

Geller maintained at various times that the $5,000 payment may have been for past bills owing or that it was not for legal services rendered in Yukon since Geller was in BC at the time of his phone conversations. The panel found Geller's evidence on this point confusing and contradictory and found that Geller did accept a retainer for legal services in relation to the Yukon legal matter.

Geller maintained that, during his prison visit, he was not representing the individual but was helping him with his situation in jail. The panel found this distinction overly narrow and that meeting with a client, negotiating for greater safety protocols to be put in place and counselling the individual in relation to his rights as a prisoner constituted an unauthorized practice of law.

The panel found that Geller committed a breach of the Law Society Rules, but that his conduct fell short of that required to support a finding of professional misconduct.

DISCIPLINARY ACTION

In determining the appropriate disciplinary action, the panel considered that, while Geller's conduct did not rise to the level of professional misconduct, it nevertheless amounted to a serious breach of the Law Society Rules and of professional ethics. Further, Geller's discipline history included multiple conduct and practice reviews and a citation hearing, and this is the second complaint about Geller practising law in Yukon while administratively suspended. It also considered that Geller reluctantly acknowledged that he breached the Law Society Rules, and tended to minimize his conduct. Public confidence in the legal profession is diminished whenever a lawyer engages in the unauthorized practice of law.

The panel ordered that Geller pay:

1. a fine of $5,000; and
2. costs of $10,335.

AMARJIT SINGH DHINDSA

Abbotsford, BC

Called to the bar: June 8, 2001

Discipline hearing: September 13 and October 18, 2018 and May 30 and June 27, 2019

Panel: Martin Finch, QC, chair, Carol Gibson and Lindsay R. LeBlanc

Decision issued: February 13 (2019 LSBC 05) and September 24, 2019 (2019 LSBC 36)

Counsel: Alison Kirby for the Law Society; Gerald Cutler, QC for Amarjit Singh Dhindsa

FACTS

Amarjit Singh Dhindsa was retained by a developer with respect to its purchase of a development property. Dhindsa also acted for subsequent end purchasers who bought 93 of the 103 lots from the developer.

With regard to the developer's purchase of 10 of the lots from the property's original owner, Dhindsa prepared and forwarded to the developer's lawyer documents relating to the sale of the lots. The developer's lawyer executed these documents and returned them to Dhindsa, with the undertaking that Dhindsa provide the developer's lawyer with a copy of the signed compliance deposit agreement prior to registration of the documents. Although Dhindsa was in possession of the executed documents, his assistant failed to deliver them to the developer's lawyer prior to their registration.

Dhindsa acted for the end purchasers on the sale of a batch of five lots. The developer's lawyer sent Dhindsa executed documents regarding two of the lots on undertakings, including that Dhindsa was to provide the developer's lawyer with a copy of signed compliance deposit agreements before authorizing the registration transfer forms, and copies of the undertaking letters between Dhindsa and the transferee's lawyer or notary three business days prior to the completion date. Dhindsa did not deliver the compliance deposit agreements for any of the lots until after the registration or his undertaking letters for three of the five lots.

With regard to the transfers of six of the lots from the original owner to the developer, Dhindsa forwarded the sellers' documents to the developer for execution. The developer's lawyer returned copies of the executed documents to Dhindsa on undertakings set out in six separate cover letters. Among those undertakings was the condition that Dhindsa not attempt to register the transfer until he held in his trust account sufficient funds that, when added to the proceeds of any new mortgage to be filed concurrently, would allow Dhindsa to complete this transaction according to the contract of purchase and sale.

DETERMINATION

The *Code of Professional Conduct for British Columbia* stipulates that a lawyer is not in a conflict of interest when representing both buyer and seller if the transaction is a "simple conveyance." The Law Society submitted that the end purchase agreements regarding the 93 lots were not simple conveyances but were part of a larger purchase and sale agreement between two developers. Dhindsa was in effect acting for both the seller and buyer in the pre-sale of units in a development property that was not yet completed. The developer's ability to transfer title to end purchasers was dependent on the developer's contractual relationship with the property's original owner.

Dhindsa submitted that these were simple conveyances because the value of property was relatively modest, the transactions did not involve the sale of any new residential units and did not involve the drafting of a contract of purchase and sale and, except for four of the lots, completion would involve payment of cash for clear titles.

The panel rejected Dhindsa's argument, finding that he was in a conflict of interest and that his actions constituted professional misconduct.

Dhindsa relied on his assistant to satisfy his undertakings, but the ultimate responsibility for ensuring all accepted undertakings are fulfilled rests with the lawyer. The panel found that Dhindsa's failure to honour trust conditions constituted professional misconduct.

Dhindsa delivered the compliance deposit agreements for two of the lots after registration. He maintained that a condition requiring three days' notice where the completion was to occur the next day was unreasonable and therefore was void. However, the panel noted that he did not seek to vary the term of the undertaking stipulating three business days.

Regarding the three remaining lots of the batch of five, the panel found that the facts were unclear as to whether Dhindsa delivered his undertaking letters to the developer's lawyer. Dhindsa told the panel that he could not find confirmation of sending the undertaking letters, and the developer's lawyer told the panel he could not find confirmation of receiving them.

The panel determined that Dhindsa's breaches of undertaking regarding two of the lots constituted professional misconduct.

At the time of registering the transfers, Dhindsa did not concurrently register a mortgage with respect to four of the lots in which the proceeds, together with funds held in trust on behalf of the end purchasers, would allow Dhindsa to complete the purchase transactions in accordance with the contract of purchase and sale. The panel found that failure to honour a trust condition was contrary to the Code and constituted professional misconduct.

DISCIPLINARY ACTION

In determining the appropriate disciplinary action, the panel considered that Dhindsa was in a conflict of interest in acting for 93 end purchasers and their financial institutions and committed breaches of undertakings in connection with 16 separate real estate transactions.

Although Dhindsa maintained that no one was harmed, undertakings are the essential underpinning upon which real estate transactions can safely occur in British Columbia, and the importance of adherence to an undertaking cannot be dismissed or discounted by consideration of whether harm happened to occur.

The panel found that Dhindsa had a financial gain by acting for two parties in the transaction. The panel also found that Dhindsa was motivated by personal gain when he registered transfer documents without holding sufficient funds in his trust account to complete a transaction. His client faced the loss of a deposit of $100,000, and Dhindsa refused to immediately withdraw the transfer document as requested by the opposing lawyer, thereby protecting the client's interest and ultimately his own.

Dhindsa's professional conduct record includes two conduct reviews, practice standards recommendations and a previous citation that resulted in an admission of professional misconduct. Dhindsa did not

implement the standards of practice urged in prior conduct reviews regarding the supervision of staff and review of files to ensure compliance with undertakings. The panel concluded that Dhindsa's conduct record was substantial and the prior breaches of undertakings in real estate transactions were aggravating factors.

The panel considered that, if the sanction did not reflect the seriousness of the conduct, public confidence in the integrity of the legal profession would be eroded, and the principle of progressive discipline supported a suspension instead of a fine.

The panel ordered that Dhindsa:

1. be suspended from the practice of law for seven weeks; and
2. pay costs of $14,648.34.

JAMES EDWARD TURNER

Victoria, BC
Called to the bar: August 5, 1987
Voluntary withdrawal of membership: December 31, 2018
Admissions and undertakings accepted: September 26, 2019

AGREED FACTS

In the course of working for more than a dozen clients in immigration-related matters, including applications for permanent residence, study permits, work permits, work permit extensions and sponsorships, James Edward Turner made misrepresentations to his clients or to third parties. Among other things, he claimed that he had submitted an application when he had not, that he was unaware of the status of an application when he knew that it had been refused or returned and that a client had status in Canada when the client did not.

ADMISSIONS AND UNDERTAKINGS

Turner admitted that he failed to provide clients with the quality of service required of a lawyer by failing to submit clients' applications in a timely matter or at all, failing to keep clients reasonably informed about the status of applications and failing to honestly and candidly advise a client that an application had not been submitted.

Turner admitted his conduct was contrary to the *Code of Professional Conduct for British Columbia* and constituted professional misconduct.

In accepting Turner's admissions and undertakings, the Discipline Committee considered that Turner self-reported and cooperated fully with the investigation; that his professional conduct record included a prior citation for similar misconduct and a practice limitation; and Turner's explanation, supported by a medical assessment, that at the time of his misconduct Turner was suffering from personal and mental health issues.

Turner voluntarily withdrew membership in the Law Society effective December 31, 2018. He agreed to undertake for 10 years, commencing on September 30, 2019:

1. not to engage in the practice of law in British Columbia until such time as he may again become a member in good standing of the Law Society of British Columbia;
2. not to apply for readmission to the Law Society or elsewhere within Canada prior to September 30, 2029;
3. not to apply for membership in any other law society prior to September 30, 2029, without first advising in writing the Law Society; and
4. not to work in any capacity for any lawyer or law firm in British Columbia, without obtaining the prior written consent of the Discipline Committee.

DONALD ALEXANDER BOYD

Langley, BC
Called to the bar: December 19, 1985
Admissions and undertaking accepted: September 26, 2019

AGREED FACTS

In May 2010, Donald Alexander Boyd failed to immediately notify the Law Society in writing that a certificate under the *Income Tax Act* for personal income tax arrears had been filed against him with the Federal Court.

Over the span of approximately one year, between 2015 and 2016, Boyd maintained more than $300 of his own money in his pooled trust account as a result of issuing bills for his legal fees and either keeping the funds in his pooled trust account or depositing payments of the bills directly into his pooled trust account instead of his general account.

ADMISSIONS AND UNDERTAKING

Boyd explained that when he became aware of the *Income Tax Act* certificate he was not familiar with the applicable Law Society rule. He has since reviewed the rule and is now fully aware of his obligation to report unsatisfied monetary judgments to the Law Society.

Boyd said that he kept more than $300 of his own funds in his pooled trust account because he wanted to have better control over his finances, and he did not know at the time that his actions were contrary to the Law Society Rules. He has since reviewed the applicable rule and is now fully aware of his obligation to not maintain more than $300 of his personal funds in his pooled trust account.

Boyd admitted that his actions in both circumstances constituted breaches of the *Legal Profession Act* or the Law Society Rules and undertook to:

- complete 15 Continuing Professional Development credits by December 31, 2019 (in addition to those normally required), including completion of the Law Society's Practice Management Course.

JEFFREY STEPHEN LOWE

Vancouver, BC

Called to the bar: September 13, 1983

Discipline hearing: October 23, 25 and 26, 2018 and July 9, 2019

Panel: Michelle D. Stanford, QC, chair, Nan Bennett and Bruce A. LeRose, QC

Decisions issued: March 19 (2019 LSBC 10) and October 8, 2019 (2019 LSBC 37)

Counsel: Alison L. Kirby and Kathleen Bradley for the Law Society; Henry C. Wood, QC for Jeffrey Stephen Lowe

FACTS

While handling trust funds received from 43 immigration clients over the course of seven years, Jeffrey Stephen Lowe billed for estimated disbursements as a "pre-bill" of disbursements and deposited these funds into his general account. If no disbursements were incurred, the client received a refund. However, Lowe routinely kept any excess funds and recorded them as "disbursement revenue." There was no detailed accounting of the excess to the clients.

Lowe obtained retainer agreements from the majority of the 43 clients that included a flat fee for legal services, an estimate of disbursements that would be incurred and government filing fees. The clients agreed to pay an initial payment as a "first instalment ... of your legal fees and disbursements." Lowe prepared and delivered invoices to his clients after the client paid the first instalment but before incurring any disbursements or providing legal services. Lowe deposited the funds received from these invoices into his general account.

DETERMINATION

Lowe knew when he deposited the funds into his general account, and when he reclassified the excess disbursements as "disbursement revenue," that the disbursements he had pre-billed to his clients had not actually been incurred. The panel concluded that, while this conduct was not knowingly dishonest, it was improper and grossly negligent, and constituted misappropriation. There was clear evidence of Lowe's practice of handling pre-billed or pre-paid clients' funds in a manner that disregarded the trust accounting rules and the *Legal Profession Act*.

The panel found that Lowe's conduct constituted professional misconduct.

DISCIPLINARY ACTION

The panel considered that Lowe repeatedly failed to adhere to Law Society trust accounting rules on multiple occasions over approximately seven years. Any unauthorized use of client trust funds amounts to misappropriation, and misappropriation is the worst type of conduct a lawyer can engage in. Whether misappropriation is intentional or not, public confidence in the integrity of the profession is irreparably harmed if lawyers are not held accountable for taking client funds.

Historically, absent rare and extraordinary mitigating factors, disbarment has been the appropriate disciplinary action for repeated misappropriation of client trust funds. However, the panel took into consideration that there was no dishonest intent in the misappropriation, Lowe had no prior professional conduct record and he took steps to correct his accounting practices once his attention was drawn to the impropriety of his conduct by a Law Society investigation.

The panel ordered that Lowe:

1. be suspended from the practice of law for five months; and
2. pay costs of $12,338.84.

BALDEV SINGH GHAG

Surrey, BC

Called to the Bar: August 1, 1985

Voluntary withdrawal of membership: November 8, 2019

Admissions and undertakings accepted: November 4, 2019

Counsel: Tara McPhail for the Law Society; Michael P. Klein, QC for Baldev Singh Ghag

FACTS

Baldev Singh Ghag practised almost exclusively in the area of real estate law in Surrey. He was the sole shareholder, president, secretary and director of Baldev S. Ghag Law Corporation, from which he conducted his law practice, and two other companies: Ferengi Trading Corporation and 608255 BC Ltd. The majority of Ferengi Trading Corporation's business included lending money to individuals and corporations concerning real estate transactions.

Both the law corporation and Ferengi Trading Corporation earned income that was not reported on their tax returns from 2005 to 2009. The Canada Revenue Agency (CRA) selected Ferengi for an audit for the 2006 taxation year as its interest payments were not reported. The audit was widened to include additional years and to encompass the law corporation and Ghag personally.

Ghag attempted to enter into an agreement with the CRA to file a voluntary disclosure of his unreported income from 2005 to 2008 and a T1 adjustment request for 2009 to have unreported income applied to his personal returns. The CRA rejected the application and prosecuted him for tax evasion.

The Law Society learned about the execution of CRA's search warrants in April 2015. The Law Society obtained a copy of the Information to Obtain the Search Warrants in May 2015 and opened an investigation file in June 2015. From October 2015 to May 2017, the Law Society unsuccessfully attempted to obtain records seized by the CRA. The investigation was twice put into abeyance by the Discipline Committee: from August 24, 2017 to February 15, 2018 and from September 20, 2018 to January 17, 2019.

On January 26, 2018, Ghag was charged with the wilful evasion of

or attempt to evade payment of taxes imposed by the *Income Tax Act*, by failing to report taxable income of $1,284,254.81 for taxation years 2005, 2006, 2007 and 2008 and thus evading payment of $418,865.66 in federal income taxes.

On January 10, 2019, the Provincial Court of BC accepted Ghag's guilty plea and found him guilty of tax evasion, as per the charge. The conviction meant Ghag filed false tax returns, deliberately under-reported his income and intentionally misrepresented the state of his business affairs to the CRA. He was sentenced to a fine of $418,865.66 (representing 100 per cent of the amount of federal income tax he was convicted of evading) and a conditional sentence order of 22 months.

ADMISSIONS AND UNDERTAKINGS

Ghag admitted he failed to report taxable income of $1,284,254.81 and evaded the payment of federal income taxes of $418,865.66, for which he was criminally convicted of an indictable offence on January 10, 2019. He admitted this constituted professional misconduct.

The Discipline Committee accepted Ghag's admission and his undertaking that, for a period of 10 years commencing on November 8, 2019, he will not:

1. engage in the practice of law in British Columbia with or without the expectation of a fee, gain or reward, whether direct or indirect;
2. apply for readmission to the Law Society or elsewhere in Canada;
3. apply for membership in any other law society without first advising in writing the Law Society of BC; and
4. permit his name to appear on the letterhead of, or work in any capacity whatsoever for, any lawyer or law firm in BC, without the prior written consent of the Law Society's Discipline Committee. ❖

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BREACH OF UNDERTAKING

A compliance audit revealed that a lawyer breached his undertakings not to transfer settlement funds from his trust account prior to returning a signed release on three personal injury files, contrary to rule 7.2-11 of the *BC Code* and Law Society Rules 3-64 and 3-65. The lawyer acknowledged his mistakes and has made changes to his practice to reduce the risk of staff error. He also implemented processes to be followed upon the deposit of funds into trust. A conduct review subcommittee recommended that the lawyer take the Continuing Legal Education Society's Understanding Undertakings course. (CR 2019-43)

DUTY OF LOYALTY

After a lawyer resigned as counsel for a client, he expressed negative comments about the former client to the media. The former client sent correspondence to the lawyer demanding that he cease making his public statements as they were harmful and contrary to his duty of loyalty. The lawyer continued to make public statements about the former client, breaching his obligations under rule 7.5-1 of the *BC Code*. The lawyer acknowledged that he let his emotional response cloud his judgment. He has established a mentorship relationship with a senior lawyer and is committed to not making any further comments about his former client. A conduct review subcommittee encouraged the lawyer to continue his mentorship relationship and to take concrete steps to ensure that emotional supports are in place in the future. (CR 2019-44)

SURREPTITIOUS RECORDING / UNREPORTED JUDGMENTS / VEXATIOUS LITIGANT IN PERSONAL CAPACITY

While representing himself against two former landlords, a lawyer breached the Rules and Code in multiple instances. He surreptitiously recorded a conversation with a previous landlord to obtain evidence of a violation, in breach of rule 7.2-3 of the *BC Code*. The lawyer acknowledged the breach and advised a conduct review subcommittee that he would seek advice from a Bencher or practice advisor before recording another party.

A number of costs judgments were also awarded against the lawyer and he failed to report the unsatisfied judgments to the Law Society, in breach of Law Society Rule 3-50. The lawyer was not aware of the rule in question, and he has assured the subcommittee that he will comply in the future.

In addition, the lawyer had been ordered not to commence further legal proceedings on his behalf in any registry of the BC Supreme Court without leave of the court. As a result of his frustration with the litigation and his emotional investment in the results, the lawyer had commenced multiple proceedings, contrary to rules 2.2-1 and 5.6-1 of the *BC Code*. The subcommittee recommended that the lawyer use resources such as practice advisors, other lawyers, Benchers and various organizations to assist with the emotional and financial side of practice. (CR 2019-45) ❖

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