The Law Society of British Columbia

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BENCHERS' BULLETIN

Keeping BC lawyers informed

The Law Society seeks input on steps toward reconciliation

by Herman Van Ommen, QC

WHEN THE TRUTH and Reconciliation Commission's report was released in 2015, its revelations about the ongoing legacy of historic discrimination reverberated through every corner of Canadian society. We in the legal profession were forced to confront the role the law played in forcing Indigenous children into residential schools, as well as the biases that continue to permeate the justice system today.

Coming to terms with this truth is a difficult and ongoing process. At the same time, we must also seek ways to respond to the commission's call for reconciliation, and as the regulator of the profession in BC, the Law Society has a key role to play. Planning the next steps in our reconciliation efforts is a daunting challenge, and it is one that the Law Society cannot undertake alone.

In order to gain input from a broad spectrum of stakeholders in the justice system, the Law Society is hosting a symposium in Vancouver on November 23, 2017, with the theme "Transforming the Law from a Tool of Assimilation into a Tool of Reconciliation." The full-day symposium will include plenary sessions and smaller, facilitated breakout group discussions. The symposium will be open to lawyers, judges, academics and representatives from various legal and Indigenous organizations.

The Law Society will be seeking input on topics such as standards for competent and ethical practice, lawyer education, systemic biases, supporting Indigenous lawyers, and encouraging the participation of Indigenous lawyers in Law Society governance.

The Law Society looks forward to undertaking concrete steps toward reconciliation, and we cannot do it without our members and other stakeholders in the justice system. Watch our website for details as the date of the symposium approaches, and I look forward to seeing you there.❖

BENCHERS' BULLETIN

The *Benchers' Bulletin* and related newsletters are published by the Law Society of British Columbia to update BC lawyers, articled students and the public on policy and regulatory decisions of the Benchers, on committee and task force work, and on Law Society programs and activities. BC lawyers are responsible for reading these publications to ensure they are aware of current standards, policies and guidelines.

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

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

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

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FROM THE LAW FOUNDATION OF BC

Law Foundation fellowships and grant

GRADUATE FELLOWSHIPS

THE LAW FOUNDATION will issue up to four graduate fellowship awards of $15,000 for the 2018-2019 academic year. Applicants must be graduates of a British Columbia law school, members of the BC Bar, students in graduate programs at the University of British Columbia or University of Victoria (except one to earn an equivalency to practise law in Canada), or residents of BC. In order to be eligible, applicants must devote themselves primarily to their full-time graduate studies in law or a law-related area.

Applications will be assessed by the Fellowships and Research Committee, composed of a minimum of three governors of the Law Foundation and one representative from each of the law faculties of Thompson Rivers University, the University of Victoria and UBC. In assessing applications, the committee will consider not only a candidate's academic achievements, but also the likelihood of furtherance of the objectives of the Law Foundation and the possible benefits to the public of BC from making an award to a candidate.

All applications and supporting

material must be received at the Law Foundation offices by **January 5, 2018.** For more information about the fellowships and the application process, refer to the Law Foundation website at www.lawfoundationbc.org (under Funding Available > Graduate Fellowships).

GRANT TO PIVOT LAW REFORM PROGRAMS

At its March meeting, the Law Foundation's board of governors approved a grant to Pivot Legal Society for its homelessness and police accountability programs. Pivot has worked since 2001 as a human rights organization located in Vancouver's Downtown Eastside. It has a board of four lawyers, four members at large and four Downtown Eastside community members.

Pivot's homelessness program is premised on its recognition that, for homeless people who are currently being displaced and exposed to the elements, the liberty to sleep in a park, set up a survival structure and congregate in informal settlement communities could constitute a vast improvement in quality of life. The goals of the program are to reorient public narratives to recognize and prioritize the rights of people experiencing homelessness; increase public awareness of the ways in which bylaw enforcement efforts may be both harmful and unconstitutional; work with municipalities so that they understand their duty to provide safe locations for homeless campers; place these experiences of homelessness into the larger legal and policy discussions regarding the right to adequate housing; and develop strategies to protect the rights of people experiencing homelessness by defending homeless communities against injunction applications and to bring civil actions on their behalf. To accomplish this, Pivot will review bylaws across BC that affect homeless people; connect with groups that work with homeless communities; create a policy brief identifying laws that target homeless people and make recommendations for law and policy reform; develop a pro bono legal defence team on injunction cases; and represent homeless communities or individuals where a case has merit.

The police accountability program works with marginalized communities to establish a system of accountable policing aimed at ending the criminalization of poverty, providing accountability when excessive force is used and ensuring equal access to policing services. The program's goals are to reform laws, policies and practices relating to police service dog use, police-involved deaths where mental health is a factor and racial discrimination in policing. Pivot will consult with community, advocacy and institutional stakeholders and make submissions to government, including the director of police services, about their research.❖

2017 Law Society Scholarship recipient Naomi Minwalla

Congratulations to Naomi Minwalla, recipient of the $12,000 Law Society Scholarship for graduate legal studies.

Minwalla was called to the bar in September 1999 and has practised law as a sole practitioner since May 2001, focusing on serving refugees, trafficked women and other vulnerable and marginalized persons. She currently provides pro bono consultations while she is completing a master of studies in international human rights law at the University of Oxford. Her thesis, *The Right to Truth Re-examined*, was inspired by her participation in a human rights field study in Ayacucho, Peru, during which she lived in remote Indigenous communities and learned first-hand from residents about the impact of 20 years of internal conflict.

"Throughout my studies, deficiencies in the Canadian legal system, most profoundly in the areas of economic and social rights, have been illuminated," Minwalla stated. "For instance, homelessness and the right to housing, which are pressing issues in BC, could be addressed more effectively if economic and social rights were recognized as fundamental human rights in Canada."❖

Photo: Alistair for Ron Sangha Productions Ltd.

Pictured left to right: 2017 Law Society Scholarship recipient Naomi Minwalla and Law Society President Herman Van Ommen, QC

A look at what's to come

by Adam Whitcombe, Acting Executive Director / CEO

I AM PLEASED to provide an update as acting CEO on what is to come in the next few months here at the Law Society. We have a busy and productive fall ahead and many initiatives under way.

As this is the last year of the 2015-2017 Strategic Plan, the Benchers are currently developing the next strategic plan, which will provide a focus for our policy and regulatory efforts. Earlier this year, the Benchers heard from Law Society staff about key topics to consider in building the next strategic plan. Over the next few months, the Benchers will more closely examine and prioritize the topics to identify outcomes and initiatives that will form the strategic plan for the coming years.

The Law Society is committed to protecting the public and helping lawyers practise competently and ethically. To that end, the Benchers are considering developing a "diversion" program as a voluntary and remedial alternative to the formal discipline process in appropriate cases. We often find that substance use, mental health issues and stress are significant contributors to problems that arise in a lawyer's practice. The current process has relatively few tools to help lawyers address these underlying factors. The goal of such a diversion program would be to address the underlying issues through voluntary conditions, treatment and support, rather than imposing more traditional discipline outcomes. If the process helps a lawyer deal with these types of issues, the public is better protected going forward. If diversion is unsuccessful, the formal discipline process remains available.

Another important innovation currently being developed is law firm regulation. The Law Firm Regulation Task Force's second interim report, which was presented to the Benchers in July, proposed several initiatives for implementing law firm regulation that will be fully considered at the September Bencher meeting.

I should also note that the Bencher initiative to recognize and regulate alternative legal service providers remains at the forefront of our efforts to improve access to justice, along with the work of the Access to Legal Services and Legal Aid Advisory Committees.

The Benchers will also continue their efforts toward truth and reconciliation and equity and diversity, as well as their review of the admission and continuing professional development programs.

Finally, in addition to the symposium on November 23 described in the President's View, there are two other events in the fall to which I want to draw your attention. The first is the annual general meeting on October 3, which is the first general meeting at which members will be able to participate entirely electronically. The second event is the Bencher election taking place on November 15. It will be the first election where voting will be entirely electronic and we hope that this will enable members to more easily participate.

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

In-house Equity Ombudsperson program

THE LAW SOCIETY welcomes Claire Marchant as the new in-house Equity Ombudsperson. The position operates within the Practice Advice department, which is structured to ensure confidentiality and separation from other Law Society departments. Communications with the Equity Ombudsperson will remain confidential.

Lawyers, articled students, law students and support staff of legal employers may contact the Equity Ombudsperson for assistance in resolving concerns about workplace discrimination and discriminatory harassment. Contact Claire Marchant at equity@lsbc.org or at 604.605.5303 if you need advice or information about dealing with your issue. For further information about the program, see the website at Support and Resources for Lawyers.

FAREWELL TO ANNE CHOPRA

After almost 18 years as the Equity Ombudsperson, Anne Chopra is moving on, effective September 30, 2017. Anne has made many significant and lasting contributions to the Law Society and, in doing so, has earned the respect and appreciation of the Benchers and staff and, in particular, the many lawyers, articling students, articling applicants and staff in law firms and other legal workplaces whom she has supported and guided over the years.

Anne has consistently and successfully applied her considerable expertise and skills to assist in the confidential resolution and proactive deterrence of problems relating to workplace discrimination and discriminatory harassment.

A huge thanks from the Law Society to Anne. She will be very much missed.

Message from Anne – I would like to thank the Law Society for giving me the opportunity to serve the profession for the past 18 years as the Equity Ombudsperson. It has been an honour and pleasure to dedicate myself to advancing fairness and respect for all individuals involved in the practice of law. These two principles fundamentally represent the meaning and purpose of the law to me. Thank you to all who have supported me in this role.❖

Photo: Brian Dennehy Photography

Milestones in the profession – The Law Society hosted a luncheon to honour lawyers who are celebrating milestone anniversaries in the profession in 2017. Receiving 50-year certificates unless otherwise noted were:

Front row, left to right: George P. Cassady, QC (60 years), Robert M. Dick, QC, M. Douglas Howard, J. Herbert Rosner, G.C. Blair Baillie (70 years), Chuck Lew, QC (60 years), Thomas R. Berger, QC (60 years), Brenton D. Kenny, QC (60 years), Gary V. Lauk, QC.

Back row: George P. Rapanos (60 years), Hamish C. Cameron, QC (60 years), W. David Black, George R. D. Goulet, Philip J. Jones, Sanford Cohen, Graham C. MacKenzie, QC (60 years), Graham J. Phillips, J. Roger Webber, QC, Glenn B. Sinclair, Edward C. Chiasson, QC, John W. Horn, QC, Leonard T. Doust, QC, Howard R. Berge, QC.

Not pictured: Robert E. Beairsto (60 years), Thomas R. Braidwood, QC (60 years), Gary R. Brown, QC, P. Donald Celle, John R. Coleman, Tyrone G. Colgur, M. Rendina K. Hamilton, QC (60 years), Stuart A. Hartman, William J. Herdy, Jack J. Huberman, QC, Grant C. Hughes, Howard J. Luke, James A. MacAulay, QC (60 years), William E. MacDonald, Charles H. McKee, John S. Milligan, QC, John A. Miner, Wallace T. Oppal, QC, W. Murray Sadler, QC, Joseph S.M. Schmidt, Robert W. Stevenson, William M. Trotter, QC, Welf A.A. Von Dehn.

In brief

COURT DATES SET IN TWU v. LAW SOCIETY

The Supreme Court of Canada has issued an order setting November 30 and December 1, 2017, as court dates to hear the appeal in *TWU v. Law Society*. The order also lists the intervenors in the case.

To read the order or for background on the matter, see our website: About Us > Trinity Western University accreditation.

JUDICIAL APPOINTMENTS

Ward K. Branch, QC, managing partner of Branch MacMaster LLP, was appointed a judge of the Supreme Court of BC in Vancouver. He replaces Madam Justice C.A. Wedge, who elected to become a supernumerary judge.

Michael J. Brundrett, Crown counsel with the Ministry of Justice, was appointed a judge of the Supreme Court of BC in Vancouver. He replaces Madam Justice W.J. Harris, who resigned.

Carla L. Forth, QC, partner at Guild Yule LLP, was appointed a judge of the Supreme Court of BC in Vancouver. She replaces Mr. Justice W. Ehrcke, who elected to become a supernumerary judge.

Nitya Iyer, QC, a partner at Lovett Westmacott, was appointed a judge of the Supreme Court of BC in Vancouver. She replaces Mr. Justice K. Bracken (Victoria), who elected to become a supernumerary judge.

Provincial Court Judge **Leonard "Len" Marchand, Jr.** was appointed a judge of the Supreme Court of BC in Kelowna. He replaces Madam Justice A.J. Beames, who elected to become a supernumerary judge.

Warren B. Milman, a partner at McCarthy Tétrault LLP, was appointed a judge of the Supreme Court of BC in Vancouver. He replaces Madam Justice S.K. Ballance, who elected to retire.

Palbinder Kaur Shergill, QC, a sole practitioner with Shergill & Company, was appointed a judge of the Supreme Court of BC in New Westminster. She replaces Madam Justice E.A. Arnold-Bailey, who retired.

Michael Tammen, QC, a sole practitioner, was appointed a judge of the Supreme Court of BC in Vancouver. He replaces Madam Justice C.J. Bruce, who elected to become a supernumerary judge.

Janet Winteringham, QC, a partner with Winteringham MacKay Law Corporation, was appointed a judge of the Supreme Court of BC in Vancouver. She replaces Mr. Justice S.J. Kelleher, who elected to become a supernumerary judge.

Mariane Ruth Armstrong was appointed a judge of the Provincial Court in Kamloops.

Michelle Daneliuk was appointed a judge of the Provincial Court in Penticton.

Monica McParland was appointed a judge of the Provincial Court in Kelowna.❖

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

Limited scope retainer FAQs

What BC Code *rules apply when acting on a limited scope retainer?*

Although lawyers have perennially limited the scope of their services, rules were added to the *Code of Professional Conduct for British Columbia* in September 2013 to provide guidance to lawyers in the delivery of limited scope retainer services. Such retainers may be used for a variety of purposes, including legal research, document preparation, examining an opposing party for discovery, and coaching for meetings and negotiations. A limited scope retainer can be a business opportunity for lawyers and a help to clients, but it is important to know the rules, the risks and some tips.

Often colloquially referred to as unbundling, a "limited scope retainer" is defined in *BC Code* rule 1.1-1 as "the provision of legal services for part, but not all, of a client's legal matter by agreement with the client." When entering into a limited scope retainer, keep in mind the obligations in Code rules 3.1-2, 3.2-1, 3.2-1.1, 3.2-9, 7.2-6 and 7.2-6.1 as well as Law Society Rules 3-98 to 3-109 for client identification and verification and Rules 3-59 and 3-70 regarding cash.

Is it possible to provide limited scope services in a competent manner?

One of the first questions to ask yourself when considering any retainer is whether you can provide the services competently and with the quality of service generally expected. A lawyer must perform all legal services undertaken on a client's behalf to the standard of a competent lawyer, and a lawyer has a duty to provide courteous, thorough and prompt service. Competence involves both ethical principles (e.g., being honest with the client about one's competency to handle a matter) and legal principles (e.g., knowledge of the law and practice). The competency rule 3.1-2 and the quality of service rule 3.2-1 should be read together. Both have commentaries that are worth a thorough review. For example, rule 3.2-1, commentary [5] lists key examples of expected practices (e.g., maintaining adequate office staff, facilities and equipment and informing a client of a settlement proposal and properly explaining it). Rule 3.1-2, commentary [7.1] makes clear that a lawyer providing services under a limited scope retainer is not exempt from competency expectations:

> [7.1] When a lawyer considers whether to provide legal services under a limited scope retainer the lawyer must carefully assess in each case whether, under the circumstances, it is possible to render those services in a competent manner. An agreement for such services does not exempt a lawyer from the duty to provide competent representation. The lawyer should consider the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. The lawyer should ensure that the client is fully informed of the nature of the arrangement and clearly understands the scope and limitation of the services. See also rule 3.2-1.1.

Suppose a new client asks you to draft a notice of civil claim for her to file. She wants your drafting services to be confidential and, initially, does not want any other service. Consider the client's needs, sophistication and ability to make informed decisions and provide instructions (rule 3.2-1, commentary [3]). If the client appears to have diminished capacity, read rule 3.2-9 and consider consulting a Law Society practice advisor.

Also assess your competency and ability to deliver the requisite quality of service. You might ask yourself the following questions: What is the standard of a competent lawyer for this service? What legal research is required? Can the client provide the necessary facts and instructions? Is the matter too complex for a limited scope retainer? Can the claim be drafted in language that the client can understand? Would the client be able to explain the claim if questioned by the court? Is the client aware of the court rules regarding costs and the relevant limitation periods? Are there adequate self-help materials available to the client? Would it be a disservice to the client to accept the instructions? Are there any other issues that should cause you to decline to act?

Is a written retainer required?

Rule 3.2-1.1 has a writing requirement specific to limited scope retainers:

> **3.2-1.1** Before undertaking a limited scope retainer the lawyer must advise the client about the nature, extent and scope of the services that the lawyer can provide and *must confirm in writing* to the client as soon as practicable what services will be provided. [emphasis added]

Commentary [1] explains that reducing to writing the discussions and agreement with the client about the limited scope retainer assists the lawyer and the client in understanding the limitations of the service to be provided and any risks of the retainer (e.g., court costs, limitation periods, possible counterclaims). Be clear about what services you will provide and what you will not provide, as you risk having any ambiguity resolved in the client's favour. Consider using a detailed checklist setting out your responsibilities and the client's responsibilities.

How do I represent myself to the client, other parties and the court?

Rule 3.2-1.1, commentary [2] cautions that a lawyer who is providing services under a limited scope retainer should be careful to avoid acting in a way that suggests that the lawyer is providing full services. This includes not only how you and other lawyers and staff in your firm interact with the client, but also how you represent yourself with the court, opposing parties and their counsel. You will also need to consider how communications from opposing counsel should be managed (commentaries [2] and [4]).

Regarding the court, commentary [3] provides:

> [3] Where the limited services being provided include an appearance before a tribunal a lawyer must be careful not to mislead the tribunal as to the scope of the retainer and should consider whether disclosure of the limited nature of the retainer is required by the rules of practice or the circumstances.

Note that the word "tribunal" is not limited to courts, but includes a court, board, arbitrator, mediator, administrative agency or other body that resolves disputes, regardless of its function or the informality of its procedures (rule 1.1-1).

Can opposing counsel communicate directly with my client without my consent?

Rule 7.2-6.1 provides guidance as to how you and the opposing counsel should conduct yourselves with respect to direct communications with your client:

> 7.2-6.1 Where a person is represented by a lawyer under a limited scope retainer on a matter, another lawyer may, without the consent of the lawyer providing limited scope legal services, approach, communicate or deal with the lawyer's client directly on the matter unless the lawyer has been given written notice of the nature of the legal services being provided under the limited scope retainer and the approach, communication or dealing falls within the scope of that retainer.
>
> Commentary
>
> [1] Where such written notice as described in rule 7.2-61 has been provided to a lawyer for an opposing party, the opposing lawyer is required to communicate with the person's lawyer, but only to the extent of the limited representation as identified by the lawyer. The opposing lawyer may communicate with the client on matters outside of the limited scope retainer.

Consider as well that a party opposite to your client may be unrepresented or may have a lawyer who is also acting only under a limited scope retainer. If the opposing party is unrepresented, rule 7.2-9 applies.

Are there situations where the limited scope retainer rule 3.2-1.1 does not apply?

Rule 3.2-1.1, commentary [5] states that the rule does not apply to situations in which a lawyer is providing summary advice, for example, over a telephone hotline or as duty counsel or for an initial consultation that may result in the client retaining the lawyer.

Do the conflict rules apply to a limited scope retainer?

Yes, the conflict rules apply to a limited scope retainer and a lawyer should generally take steps to determine whether there is a conflict before meeting with the client (see the model conflicts of interest checklist in the resource list at the end of this article). However, the Code provides an exception for services that fall within the definition of "short-term summary legal services" to make it easier for lawyers to provide advice or representation under the auspices of a pro bono or not-for profit legal services provider. A lawyer may provide short-term summary legal services without first taking steps to determine if there is a conflict. If there is a conflict, however, the lawyer must not provide or must cease providing services.

What are short-term summary legal services?

Rule 3.4-11.1 defines "short-term summary legal services" and rules 3.4-11.2 to 3.4-11.4 set out how conflicts are handled:

> 3.4-11.1 In rules 3.4-11.2 to 3.4-11.4 **"short-term summary legal services"** means advice or representation to a client under the auspices of a pro bono or not-for-profit legal services provider with the expectation by the lawyer and the client that the lawyer will not provide continuing legal services in the matter.
>
> 3.4-11.2 A lawyer may provide short-term summary legal services without taking steps to determine whether there is a conflict of interest.
>
> 3.4-11.3 Except with consent of the clients as provided in rule 3.4-2, a lawyer must not provide, or must cease providing short-term summary legal services to a client where the lawyer

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Services for lawyers

Law Society Practice Advisors

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

Practice advisors assist BC lawyers seeking help with:

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

Tel: 604.669.2533 or 1.800.903.5300.

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

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

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

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

Conduct reviews

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

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

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

BREACH OF UNDERTAKING

A lawyer breached an undertaking by releasing settlement funds to her client prior to delivering an originally executed release to opposing counsel, contrary to rule 7.2-11 of the *Code of Professional Conduct for British Columbia*. The lawyer also breached client confidentiality by mistakenly sending the release directly to the opposing party rather than to counsel, contrary to rule 3.3-1. As a result of the mistake, the release was read by an employee of the opposing party. On discovery of the error, the lawyer self-reported to the Law Society. The lawyer took full responsibility for the breach of undertaking and unauthorized disclosure of the confidential information. A conduct review subcommittee advised the lawyer that reliance on undertakings and maintenance of confidentiality are fundamental to the practice of law and must be accorded the most diligent attention. The lawyer was emphatic in stating that this type of inadvertence would never reoccur. The lawyer implemented a new office procedure under which undertakings are highlighted and flagged in every file. The lawyer also educates staff on the importance of maintaining client confidentiality and now personally reviews and verifies contact information. The lawyer was advised of the principle of progressive discipline and that any similar infractions may result in further sanctions. (CR 2017-22)

In a separate case, a lawyer breached his undertaking in a real estate conveyance by failing to obtain a discharge in a timely manner, contrary to rules 5.1-6 and 7.2-11 of the *Code of Professional Conduct for British Columbia*. On the closing date, the purchaser's lawyer sent the sale proceeds to the lawyer on his undertaking to obtain a discharge for the each of the sellers' existing financial charges registered on title, including a second mortgage and an assignment of rents. The lawyer provided his undertaking prior to obtaining a written payout statement from the relevant lending institution. The lawyer subsequently discovered that he had insufficient funds in trust to satisfy the payout. The lawyer reported the incident to the Lawyers Insurance Fund, which completed the discharge of the mortgage and assignment. A conduct review subcommittee advised the lawyer that the breach of an undertaking, even as the result of a mistake, is a very serious matter. The lawyer confirmed that he has changed his procedures so that he will not provide an undertaking without first receiving a proper payout statement, and he will only rely on the written payout statement, rather than a client's advice as to the amount owing. (CR 2017-23)

INADEQUATE SUPERVISION OF PARALEGAL AND WRONGFUL WITHDRAWAL

A lawyer failed to adequately supervise a paralegal whose services he was using. In particular, he failed to ensure that he had oversight and control over trust receipts, deposits and billings, taking of client instructions and reporting to clients, contrary to rule 6.1-3 of the *Code of Professional Conduct for British Columbia* and Part 3, Division 7 of the Law Society Rules. The lawyer also failed to maintain control over client files, including keeping copies of client contact information. The paralegal left the country with client retainers. Because the lawyer had permitted the paralegal to have primary contact with the clients, the lawyer was unable to contact and notify a number of clients of his withdrawal as counsel, contrary to rules 3-7.1 and 3-7.9 of the Code. A conduct review subcommittee advised the lawyer that he showed poor judgment in continuing to work with the paralegal when he ought to have known there were issues with respect to the paralegal's trustworthiness and by not taking the time and effort necessary to supervise his paralegal. (CR 2017-24)

FAILURE TO SATISFY OR REPORT MONETARY JUDGMENT AND MEET FINANCIAL OBLIGATIONS

A lawyer failed to report an unsatisfied judgment registered against the lawyer's home by the Canada Revenue Agency (CRA) for unpaid personal income taxes, contrary to then Law Society Rule 3-44 (now Rule 3-50). The lawyer admitted to owing outstanding amounts to CRA for personal income taxes, corporate taxes and GST in respect of her law practice and a family company for which she was a director. The lawyer fell behind in accounting tasks and did not segregate funds to deal with her financial obligations. The lawyer acknowledged failing to meet her financial obligations relating to her practice, contrary to rule 7.1-2 of the *Code of Professional Conduct for British Columbia*. A conduct review subcommittee advised the lawyer that the obligation to meet financial obligations and to report judgments to the Executive Director, if judgments cannot be satisfied within seven days, is imperative, not only to maintaining the public's trust in the profession, but also to ensuring that lawyers conduct their affairs in a way that minimizes risk to clients. The lawyer has now retained a bookkeeper and accountant, has made arrangements to pay off her outstanding debts and will remain current in her obligations. (CR 2017-25)

BREACH OF CONFIDENTIALITY OF LAW SOCIETY COMPLAINT

When a lawyer filed a complaint with the Office of the Chief Judge of the Provincial Court, he disclosed materials that formed part of a Law Society complaint investigation, though he knew or ought to have known that the materials could not be used without first obtaining consent from the Executive Director and the Law Society complainant, contrary to section 87 of the *Legal Profession Act* and Law Society Rule 3-3. A conduct review subcommittee reminded the lawyer of the central importance of the confidentiality provisions to the Law Society complaint process. The provisions ensure that there are no impediments to the free flow of

information during the investigation by ensuring that the information will be kept confidential and not used in collateral proceedings. The lawyer understands that his conduct fell below the standard expected of lawyers; however, his actions appear to have been the product of poor judgment rather than malice, no harm resulted and he has apologized. In the future, the lawyer will read communications from the Law Society and will be diligent as to how he conducts himself. (CR 2017-26)

FAILURE TO COMPLY WITH PROFESSIONAL OBLIGATIONS IN RELATION TO DIGITAL FILINGS WITH THE LAND TITLE OFFICE / CLIENT VERIFICATION ERROR

A lawyer affixed his digital signature to a *Land Title Act* declaration representing that he had in his possession an original power of attorney when he did not, contrary to ss. 168.3 and 168.9 of the *Land Title Act*. The lawyer also failed to retain an agent to verify the identity of his client who executed a power of attorney in a foreign country, contrary to Law Society Rules 3-95(1) and 3-97(1). A realtor was assisting the client who resided outside of Canada in the sale of a condominium in Vancouver. The realtor arranged for the client to provide a power of attorney authorizing the realtor to execute a conveyance on the client's behalf. When presented with a copy of the power of attorney, the lawyer believed it was the original based on the appearance of the client's signature and because he witnessed the realtor's signature. The lawyer acknowledged that lawyers are vulnerable to being used to effect fraudulent transactions and that he should be extremely cautious before accepting a purported original document that he did not witness being executed by all signatories. The lawyer also acknowledged the importance of the client verification rules, particularly with respect to preventing money laundering. The lawyer stated that he has increased his vigilance. He has improved his file management systems, by ensuring that transaction closing letters list all original documents that are being returned. The lawyer stated that he will consistently use an agency agreement with a foreign lawyer to verify the identity of clients when providing legal services in respect of a financial transaction to clients who are not in Canada. The subcommittee recommended that, in future, the lawyer phone a practice advisor if he is in doubt about his professional obligations. (CR 2017-27)

CONFLICT OF INTEREST

A lawyer provided legal services to a company in which both she and her spouse had a material financial interest, placing her in a conflict of interest that affected her insurability and exposing the company to risk it had not consented to, contrary to Chapter 7, rule 2 of the *Professional Conduct Handbook* then in force. The lawyer also acted in a conflict of interest by continuing to represent the company after a dispute arose between the company, certain shareholders and the lawyer's spouse (a shareholder, director and employee of the company), contrary to rule 3.4-1 of the *Code of Professional Conduct for British Columbia*. The lawyer also improperly reviewed a privileged email between the company and its counsel regarding the dispute between the company and her spouse, and failed to advise the company and its counsel that she was aware of the email's contents, and what use, if any, she intended to make of its contents, contrary to rule 7.2-10 of the Code. A conduct review subcommittee discussed the importance of the duty of undivided loyalty to the company, a client of her law firm, and pointed out that she had failed to follow proper precautions to mitigate the conflict after becoming aware that the company's interests were adverse to both hers and her spouse's. The subcommittee acknowledged that the lawyer was in a very difficult position given the relationships involved, which is why it is vital to recognize potential conflicts of interest and to take immediate steps to avoid them. The subcommittee also stressed that "reviewing" an email was the equivalent of "receiving" it, and that the lawyer knew or ought to have known that the email was not intended for her to read, and accordingly rule 7.2-10 of the Code was engaged. This meant she ought to have personally advised the company of the full extent to which she was aware of the contents and what use, if any, she intended to make of them. It was apparent that the lawyer deeply regrets her actions and the subcommittee is confident that no similar issues will arise in the future. (CR 2017-28)

FACILITATING CLIENT FRAUD / MISREPRESENTATION

In representing a client in the refinancing of a second mortgage on a residential property, a lawyer: (a) failed to obtain a mortgage statement directly from the first mortgage holder; (b) failed to advise the notary acting for the second lender that the mortgage statement he provided was obtained from his client and not directly from the first mortgage holder; and (c) failed to follow the advice contained in a Fraud Alert to avoid becoming involved in a fraudulent transaction. The mortgage statement provided by the lawyer's client turned out to be a forgery that misrepresented the amount owing on the first mortgage. The lawyer's conduct unwittingly facilitated a fraud by his client, contrary to Chapter 4, rule 6 of the *Professional Conduct Handbook* then in force. The lawyer readily accepted responsibility for his conduct and was remorseful. He has instituted a number of remedial measures to ensure this type of incident does not happen again and has agreed to conduct formal training for his staff regarding "badges of fraud," and to develop a manual on that topic to be incorporated into his office policy manual. (CR 2017-29)

ENGAGING IN QUESTIONABLE CONDUCT / CONFLICT OF INTEREST

A lawyer failed to take adequate steps to verify the accuracy of representations that he made in a letter of reference, contrary to Chapter 4, rule 6 of the *Professional Conduct Handbook* then in force. The lawyer relied on what his partners and the client told him to prepare the letter and did not take steps to verify the truth of its contents. The letter contained a number of falsities, which the client used to obtain additional monies from other potential investors. The lawyer prepared the reference letter at a time when both he and his wife had loans outstanding with the client, and his financial interest would reasonably be expected to affect his candour, objectivity and professional judgment, contrary to Chapter 7, rule 2 of the Handbook. In preparing the letter, he also failed to disclose that he had a direct or indirect financial interest in the business venture, contrary to Chapter 2, rule 1. The alleged business never materialized, and all the investors lost their money. The lawyer acknowledged to a conduct review subcommittee that he had trusted the client to an excessive degree when preparing the reference letter. That undue trust was demonstrated by the personal financial loss he experienced as a result of his business dealings with him. The lawyer acknowledged that his failure to disclose that financial interest in the reference letter casts doubt on his professional integrity, because a reader could reasonably expect to be informed about it in the letter. The lawyer advised the subcommittee that he has taken steps to ensure that he will not repeat his errors. The subcommittee stressed the importance of taking care when preparing documents such as a letter of reference and the importance of independently verifying facts. The subcommittee advised the lawyer to take active steps to ensure that he is not creating tools that an unscrupulous person could use to engage in dishonest behaviour. (CR 2017-30) ❖

Discipline digest

BELOW ARE SUMMARIES with respect to:

- Stanley Chang Woon Foo
- Terrance Edward Hudson
- Pir Indar Paul Singh Sahota
- Robert Collingwood Strother
- Gregory Louis Samuels
- Sumit Ahuja

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

STANLEY CHANG WOON FOO

Vancouver, BC
Called to the bar: November 10, 1995 (BC); June 24, 1994 (Ontario); June 2010 (New York State)
Court of Appeal: March 17, 2017 (Frankel, Groberman and Dickson, JJA)
Written reasons: April 11, 2017 (2017 BCCA 151)
Counsel: A.R. Westmacott, QC for the Law Society; R.C. Gibbs, QC for Stanley Chang Woon Foo

BACKGROUND

A hearing panel found that, by making discourteous or threatening remarks to a social worker in a courthouse hallway, including saying he "should shoot" her, Stanley Chang Woon Foo had committed professional misconduct. The hearing panel ordered that Foo be suspended for two weeks and pay costs. Foo applied for a review of that decision.

The Benchers on review upheld the decision of the hearing panel, including disciplinary action. The Benchers also ordered Foo to pay the costs of the review. (2015 LSBC 34; Winter 2015 Discipline digest).

Foo appealed the decision of the Benchers on review to the Court of Appeal.

COURT OF APPEAL DECISION

The Court of Appeal found that it was reasonable for the Benchers, in balancing Foo's *Charter* rights with their duty to protect the public interest in the administration of justice, to hold that what Foo did exceeded the bounds of appropriate conduct. The court dismissed Foo's challenge to the review board's finding of professional misconduct.

The court further found that Foo failed to demonstrate any error in how the decision concerning disciplinary action was arrived at, or that the sanctions imposed were unreasonable. The appeal was dismissed.

Read the full decision on the court's website.

TERRANCE EDWARD HUDSON

Smithers, BC
Called to the bar: November 30, 2005
Discipline hearing: April 21, 2017
Panel: James E. Dorsey, QC, Chair, Jeff Campbell, QC and Carol Gibson
Decision issued: May 29, 2017 (2017 LSBC 17)
Counsel: Carolyn Gulabsingh for the Law Society; Henry C. Wood, QC for Terrance Edward Hudson

FACTS

On October 16, 2014, in the course of representing a client in family law proceedings in Provincial Court, Terrance Edward Hudson became involved in a verbal altercation with opposing counsel. The disagreement became heated, until the judge intervened and expressed his disappointment in the conduct of counsel. The judge concluded the case conference, referred the parties to the judicial case manager and adjourned. Hudson apologized to the court and court staff in writing later that day.

The opposing party and the court made complaints to the Law Society about Hudson's behaviour.

The hearing panel noted that incivility in court or another formal or informal setting intended to achieve a resolution of differences between parties is obstructive to the proper functioning of the process and impedes the orderly administration of justice. The impact of such behaviour was clearly evident in this case. It abruptly led to the breakdown of the proceedings and the intervention of the presiding judge.

ADMISSION AND DISCIPLINARY ACTION

Hudson made a conditional admission that he committed professional misconduct in the course of the verbal altercation with opposing counsel. Hudson consented to pay a fine of $5,000 and hearing costs of $1,241.65.

Hudson had a professional conduct record consisting of conduct reviews, although the conduct reviews were for dissimilar and unrelated behaviour. He was unqualified in acknowledging his misconduct to the Law Society and to the panel, and has taken steps to manage his affairs so that he will not repeat his impulsive behaviour.

The Discipline Committee accepted Hudson's conditional admission of professional misconduct and the proposed disciplinary action and instructed discipline counsel to recommend acceptance by the hearing panel.

The hearing panel accepted Hudson's admission and the proposed disciplinary action and ordered that Hudson pay:

1. a fine of $5,000; and
2. costs of $1,241.65.

PIR INDAR PAUL SINGH SAHOTA

Surrey, BC
Called to the bar: August 11, 2006
Discipline hearing: April 25 to 27 and November 24, 2016
Panel: Phil Riddell, Chair, Ralston S. Alexander, QC and Glenys Blackadder
Decisions issued: July 25, 2016 (2016 LSBC 29) and May 30, 2017 (2017 LSBC 18)
Counsel: Alison Kirby for the Law Society; Pir Indar Paul Singh Sahota on his own behalf

FACTS

A Law Society trust compliance audit at Pir Indar Paul Singh Sahota's office beginning on February 23, 2011 was put over until September 26, 2011, as Sahota's records were incomplete and needed to be put in proper order.

As a result of the audit, a lengthy citation was issued comprising seven separate allegations, some of which include several sub-allegations of misconduct. In total, 52 factual incidents were set out in the citation, dealing with events that occurred between July 2008 and July 2011. Sahota replied to a Notice to Admit prepared by the Law Society, essentially admitting all factual allegations but denying the allegations of misappropriation.

Since virtually all other components of the multi-count citation were admitted, the hearing panel considered whether Sahota's behaviour amounted to misappropriation. This included incidents that demonstrated improper handling of trust funds, including misappropriating or improperly withdrawing client trust funds; not immediately eliminating trust fund shortages upon discovery of the shortages; failure to deposit trust funds in a pooled trust account as soon as practicable; maintaining more than $300 of personal funds in a pooled trust account, contrary to the Law Society Rules; and failure to maintain accounting records in compliance with the Law Society Rules.

The panel felt that a finding of professional misconduct without a matching determination of misappropriation would not sufficiently describe the extent to which the public trust has been abused in the circumstances of this citation. The sheer volume of the delicts established the necessary element of fault. This extent of trust account mismanagement must in itself demonstrate the necessary elements of wrongdoing and fault.

The panel concluded that "the English language has insufficient adjectives to pay proper respect to the mess that was the financial records of [Sahota]." It also concluded that, although Sahota successfully completed the Small Firm Practice Course twice, he must have "had assistance with the testing sections of the course to establish a passing status."

DETERMINATION

The panel found that the facts cited in the allegations disclose a marked departure from the conduct the Law Society expects of lawyers and is therefore professional misconduct.

The panel also found that, in the conduct of the financial aspects of his practice, Sahota was "so comprehensively inept" that "it may not be appropriate to characterize his behaviour as negligent" and that Sahota is therefore also guilty of misappropriation of his clients' funds.

DISCIPLINARY ACTION

The panel acknowledged this was a unique case. While the misappropriations were very serious, the panel had not found any dishonesty or lack of integrity in Sahota. The panel considered mitigating factors, including that he had no discipline history, he personally gained nothing from the misconduct and there was no impact on his clients; however, the panel noted that there were more than 50 documented instances of rule breaches over a long span of time.

The panel ordered that Sahota:

1. be suspended for one month;
2. be prohibited from engaging in any capacity with files involving the purchase, sale or financing of real estate until the restriction is lifted by the Practice Standards Committee; and
3. pay costs of $14,505.50.

ROBERT COLLINGWOOD STROTHER

Vancouver, BC
Called to the Bar: May 12, 1981
Ceased membership for non-payment of fees: January 1, 2008
Bencher review: January 24, 2017
Benchers: Philip Riddell, Chair, Pinder Cheema, QC, Craig Ferris, QC, Steven McKoen, Elizabeth Rowbotham and Sarah Westwood
Decision issued: June 26, 2017 (2017 LSBC 23)
Counsel: Henry C. Wood, QC for the Law Society; Robert W. Grant, QC for Robert Collingwood Strother

BACKGROUND

In its decision of February 26, 2015, a hearing panel concluded that Robert Collingwood Strother had committed professional misconduct by failing to advise his client that he had obtained a financial interest in a potential commercial competitor, failing to advise the client that his previous negative legal opinion concerning an amendment to the *Income Tax Act* should be reconsidered and failing to advise the client of a favourable tax ruling. (2015 LSBC 07; 2015 LSBC 56; Summer 2016 Discipline digest)

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

APPLICATION TO INTRODUCE FURTHER EVIDENCE

Strother applied to introduce further evidence pertaining to the review. A review panel may hear new evidence in special circumstances. However, the review panel found no special circumstances that would compel or allow it to hear evidence that was not part of the record, and dismissed the application. (2016 LSBC 46)

DECISION OF THE REVIEW PANEL

The review panel found that:

- the hearing panel was correct in finding that Strother's failure:
  - to provide material disclosure to his client of his financial interest in a potential commercial competitor; and
  - to advise the client that his previous negative legal opinion concerning an amendment to the *Income Tax Act* should be reconsidered

each constituted professional misconduct; and that

- the hearing panel erred in finding that Strother's failure to advise the client of a favourable advance tax ruling constituted professional misconduct; but
- notwithstanding such error, the hearing panel was correct in imposing a five-month suspension in the circumstances; and
- the hearing panel's award of costs was appropriate.

Strother has appealed the decision to the Court of Appeal.

GREGORY LOUIS SAMUELS

Vancouver, BC

Called to the bar: May 20, 1994

Discipline hearing: October 5 and 6, 2016 and May 31, 2017

Panel: Herman Van Ommen, QC, Chair, Carol Gibson and Peter Warner, QC

Decisions issued: January 16 (2017 LSBC 01) and June 29, 2017 (2017 LSBC 25)

Counsel: Alison Kirby for the Law Society; Robin N. McFee, QC and Jessie I. Meikle-Kahs for Gregory Louis Samuels

FACTS

In March 2006 a woman was injured while walking on a road in Point Roberts, Washington, and was transported to BC for medical treatment, where the Ministry of Health incurred costs of $15,303.30 treating her. The woman retained Gregory Louis Samuels to represent her.

The ministry wrote the woman saying it would attempt to collect the costs of her hospital and medical care from the responsible party. Samuels responded on his client's behalf saying he would protect the ministry's account for those expenses from the proceeds of any settlement or judgment obtained on the client's behalf, on the condition that the ministry pay Samuels's fees on any sums collected and remitted, and that the ministry waive its right to subrogation if any settlement obtained was for less than the full value of the claim.

The ministry responded, saying it would pay up to 33 1/3 per cent of the amount recovered for legal fees, but it was not willing to waive its claim in the event that the client received a reduced settlement.

Samuels did not respond, but in October 2008, he wrote the ministry asking for the true costs of his client's medical treatments, and saying that his office agreed to protect the ministry's subrogated interests.

That same month, an associate in Samuels's office wrote the ministry, again referring to the ministry's subrogated interest. The ministry responded, saying the total amount owed to it was $15,303.30. The letter also stated that, while the ministry agreed to the 33 1/3 per cent recovery fee, it expected to receive the remainder of that total amount.

By June 2010 the associate had negotiated a settlement of US$95,000 with US insurers. He wrote to the ministry saying the claim had been settled and he would forward payment. A final account dated June 29, 2010 and signed by Samuels showed a payment to "MSP Third Party Liability" of $10,202.20, which was the amount left after taking 33 1/3 per cent from the total Ministry of Health claim of $15,303.20.

On July 30, 2010, Samuels's US dollar trust account received the settlement proceeds of US$95,000. On the same day, Samuels withdrew $36,169.01 for his fees and disbursements, transferring that amount to his US dollar general account.

In addition, US$10,988.91, which was the US dollar amount of two Canadian accounts owing, including to the Ministry of Health, was also transferred from Samuels's US dollar trust account to his US dollar general account.

Although funds to pay the Ministry of Health were transferred from his US dollar trust account to his US dollar general account, Samuels did not pay those funds to the Ministry of Health.

On August 8, 2010 Samuels signed a cheque in the amount of $11,128.68 drawn on his Canadian dollar general account payable to the Ministry of Finance. However, Samuels testified that, sometime between signing the cheque and November 22, 2010, he made the decision not to pay those funds to the Ministry of Health. It was his view that his client had not been made whole and that the Ministry of Health was not entitled to the funds, based on Washington State law concerning insurance recoveries.

Samuels testified that he advised his associate of the decision and believed that the associate would tell the Ministry of Health that Samuels would not to pay any part of the subrogated claim. The associate testified he did not recall such a discussion.

On November 22, 2010, a cheque for $926.48 was issued and sent to the Ministry of Health in respect of an unrelated claim for a different client. The $10,202.20 remaining from the August 8, 2010 cheque for $11,128.68 was not dealt with.

The sum of US$9,690.05 remained in Samuels's US dollar general account until July 13, 2015, when $10,202.20 was put into his Canadian dollar trust account. Subsequent to the discipline hearing in October 2016, Samuels deposited $2,164.24 to make up the different exchange rate applicable at the time of transfer in 2015.

On October 4, 2013 and November 7, 2013 the Ministry of Health wrote to Samuels's associate seeking payment of its subrogated claim. A ministry lawyer subsequently contacted Samuels, and the two corresponded by email and telephone.

In February 2015 the Ministry of Health complained to the Law Society.

In July 2015 Samuels commenced declaratory proceedings in a Washington State court in his client's name, asserting that the Ministry of Health was not entitled to the funds withheld from her settlement. He did not advise his client of this. Samuels waived any limitation defence she might have under Washington law without advising her of his intention to do so or being instructed to do so.

Samuels advised his client on March 2, 2016 that $10,202.20 withheld from her settlement proceeds had not been paid to the ministry as shown in her statement of account. She was also advised a declaratory action had been commenced. She was not told that the funds withheld had not been held in trust from 2010 to 2015 or that any limitation defence in respect of the declaratory action had been waived.

DETERMINATION

The panel found that Samuels had committed professional misconduct with respect to four of the six allegations in the citation, including:

- improperly withdrawing, or authorizing the withdrawal of, US$9,690.05 from his trust account;
- failing to forward the sum of $10,202.20 to the Ministry of Health;
- misrepresenting to the client that a portion of the settlement proceeds would be paid to the Ministry of Health and failing to correct that misrepresentation when he decided not to pay; and
- commencing an action in the Superior Court of Washington State in the name of his client without her instructions.

DISCIPLINARY ACTION

The panel ordered that Samuels:

1. be suspended for 30 days; and
2. pay costs of $16,090.

SUMIT AHUJA

Vancouver, BC
Called to the bar: April 25, 2011
Discipline hearing: May 31, 2017
Panel: Craig Ferris, QC, Chair, Ralston Alexander, QC and Don Amos
Decision issued: July 6, 2017 (2017 LSBC 26)
Counsel: Mark Bussanich for the Law Society; Henry Wood, QC for Sumit Ahuja

FACTS AND DETERMINATION

The night before Sumit Ahuja planned to travel to Kelowna to attend a hearing, he attended a firm event and was out later than expected. He slept through his alarm and missed his flight to Kelowna to attend the hearing. That morning, he spoke to his assistant and asked her to send a memo to the court in Kelowna advising he had missed his flight due to overbooking. He called his client and provided a similar explanation. He was permitted to attend the hearing by telephone and the matter was adjourned to later that week.

A day after the incident, he admitted his misrepresentation to his firm's partners. He also sent letters of apology to the court and to the client and self-reported the events to the Law Society.

A hearing panel found that Ahuja committed professional misconduct by misleading the court and his client about his reason for being unable to attend a hearing.

DISCIPLINARY ACTION

The panel considered similar past cases and Ahuja's professional conduct record. At the hearing, Ahuja testified that, when he applied for admission to the Law Society, he admitted he provided a false name to a police officer while driving under suspension. As a pre-admission requirement, he provided a letter to the Credentials Committee addressing the importance of truthfulness and candour for lawyers. The panel was troubled by the recurring nature of the misleading behaviour and determined a suspension was necessary.

The panel ordered that Ahuja:

1. be suspended for one month; and
2. pay costs of $3,500.❖

Credentials hearings

Law Society Rule 2-103 provides for the publication of summaries of credentials hearing panel decisions on applications for enrolment in articles, call and admission and reinstatement.

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

HOUTAN SANANDAJI

Hearing (application for enrolment): March 7 and 8, 2017
Panel: Sharon Matthews, QC, Chair, John Hogg, QC and John Lane
Order made: March 8, 2017
Decision issued: June 8, 2017 (2017 LSBC 20)
Counsel: Gerald Cuttler for the Law Society; Craig Jones, QC for Houtan Sanandaji

BACKGROUND

In his application for enrolment in the Admission Program, Houtan Sanandaji disclosed several past criminal charges. A credentials hearing panel considered the charges and whether Sanandaji's application was accurate and complete.

On or about November 8, 2008, Sanandaji was charged under section 254(5) of the *Criminal Code* (failure or refusal to provide a breath sample), section 161 of the *Motor Vehicle Act* (driving in the wrong direction) and section 144(1)(b) of the *Motor Vehicle Act* (driving without reasonable consideration).

Sanandaji was given a ticket for excessive speeding in 2011.

In 2015 Sanandaji was charged under section 266 of the *Criminal Code* (assault).

Describing the 2008 driving incident in his application, Sanandaji said that he had not been drinking and did not refuse to provide a breath sample. He did not disclose that, in the same incident he was charged with driving in the wrong direction and driving without reasonable consideration. A copy of the charges obtained by the Law Society confirmed that he was charged with failure to provide a sample, and also that he was found "guilty of the lesser included offence" of driving in the wrong direction, although neither driving in the wrong direction nor driving without reasonable consideration is a lesser included offence of refusing to provide a breath sample. After thorough cross-examination of Sanandaji, the hearing panel accepted that Sanandaji was not impaired and did not refuse to provide a sample.

Regarding the excessive speeding ticket in 2011, counsel for the Law Society said he placed no emphasis on this incident and noted that Sanandaji had a clean driving record since then. Neither the excessive speeding charge nor a 2007 speeding charge was asserted as amounting to evidence of problems with character, repute or fitness.

In his application, Sanandaji disclosed the assault charge. The Law Society did not take issue with his description of the altercation, but rather with his description of the outcome and the disposition of it. In his application, he left the impression that the charges were stayed due to lack of merit. In fact they were stayed as part of an alternative measures plan, according to which he would complete 16 hours of community service and apologize and provide restitution to the bar manager who was involved in the altercation. Alternate measures are recommended only if Crown counsel is satisfied that there is a substantial likelihood of conviction.

The panel was satisfied that Sanandaji was not aware of this Crown counsel policy, that, at the time of his application, he viewed the provisions of the alternative measures plan as steps to achieve the stay, and that he believed the correct description of the disposition was that it had been stayed. The panel was satisfied that the incident was not part of a pattern of behaviour and did not amount to a problem with character, repute or fitness.

DECISION

The panel found that Sanandaji was of good character and repute and fit to be enrolled into the Law Society Admission Program and, in due course, to become a barrister and a solicitor of the Supreme Court. He was allowed to commence his articles.

DANIEL CLAYTON GALLANT

Hearing (application for enrolment): May 24, 2017

Panel: Nancy G. Merrill, QC, Chair, Lance J. Ollenberger and Peter D. Warner, QC

Decision issued: June 13, 2017 (2017 LSBC 21)

Counsel: Henry C. Wood, QC for the Law Society; Sarah J. Rauch for Daniel Clayton Gallant

BACKGROUND

Daniel Clayton Gallant led a life of crime and violence ending 16 years ago. His criminal convictions included assaults, assaults causing bodily harm, uttering threats, fighting and prohibited weapon possession. He became involved with gangs, violence and radical extremism.

Deciding to seek help and guidance, he did two terms at a drug treatment facility, joined Alcoholics Anonymous, became involved in "Red Road" healing and participated in First Nations ceremonies, with the result that, since age 26, he has abstained from all drug and alcohol use. A social worker course led to years of counselling training, for which he earned certificates, and he is currently a registered social worker in good standing with the BC College of Social Workers. Gallant completed a bachelor of arts degree in 2011 and graduated with a law degree in May 2017.

Gallant received a pardon for his criminal convictions in 2008. He is active in the areas of combatting radicalization, right-wing extremism, hate crimes and terrorism. From 2005 to 2017 he published 18 articles and performed 44 conference speaking engagements, including in Paris, London, New York and Ottawa. He trains law enforcement officers and advises governments.

Gallant applied for enrolment in the Admission Program, and the Credentials Committee ordered a hearing to determine whether he met the criteria for admission.

The hearing panel observed, as other panels have done in the past, that rehabilitation from a criminal past such as this is not only possible, but is to be encouraged. It is in the public interest to admit lawyers from diverse backgrounds with a view to meeting the legal needs of and protecting all sectors of society.

The panel also noted that Gallant's extensive academic and in-field work is very important work in the world today, and he is to be encouraged in those efforts.

DECISION

The panel found that Gallant is of good character and repute and fit to become a barrister and a solicitor of the Supreme Court.

APPLICANT 10

Hearing (application for enrolment): September 8-9 and November 5-6, 2015, January 11-12 and April 21, 2016

Written submissions (application for non-disclosure): March 13 and 20, 2017

Panel: Gregory Petrisor, Chair, William Everett, QC and Thelma Siglos

Decisions issued: February 27 (2017 LSBC 06) and August 1, 2017 (2017 LSBC 28)

Counsel: Jean P. Whittow, QC for the Law Society; Applicant 10 on his own behalf

BACKGROUND

In March 2010 Applicant 10 was suspended from another law society for non-payment of fees. In July 2011 he applied for transfer and admission to the Law Society of BC.

In September 2011 Applicant 10 joined a BC law firm as a solicitor. He was terminated from that position in January 2012.

In February 2012 he was found by another law society to have committed conduct worthy of sanction, received a reprimand and was ordered to pay costs. Also in February he signed a shareholders' agreement with a client of the BC law firm, taking a two per cent shareholder interest and a position as "legal advisor."

In October 2012 he was reinstated to the other law society and was granted active non-practising status.

Applicant 10 has a history of alcohol abuse, and in 2010 he received a suspended sentence and three years of probation for breaking and entering and theft charges.

DECISION

The panel examined the evidence of the applicant's character, repute, fitness and suitability to practise law. The panel found that the applicant's conduct cast serious doubt on his ability to appreciate the difference between right and wrong. The panel found that the applicant failed to prove that he was of good character and repute and failed to prove that he was fit or suitable to be admitted to the bar.

The panel dismissed the application for transfer and call and admission to the Law Society of British Columbia.

APPLICATION FOR NON-DISCLOSURE

Applicant 10 sought an order that evidence and submissions relating to medical reports and related correspondence be sealed and prohibited from disclosure or publication. Much of the information was created as a consequence of the application for enrolment, which Applicant 10 knew would be used by the Law Society, but the applicant opposed the further publication or distribution of that information.

Applicant 10, the Law Society and a review board or appellate court have a legitimate need to access a hearing panel's entire record of proceedings

and written reasons. On the other hand, members of the profession and the public do not have the same need for all of the details contained in the exhibits, the transcript of proceedings or the written reasons.

DECISION ON NON-DISCLOSURE

The hearing panel ordered that:

- the reports and correspondence listed and contained in the book of "Medical Documents and Correspondence" marked as an exhibit in this proceeding must not be disclosed;
- the portions of the transcript of this proceeding that pertain to medical reports and related correspondence, including testimony of expert witnesses and related submissions by either party, must not be disclosed; and
- to give effect to the terms of this order, 28 specified paragraphs of the panel's written decision in this proceeding must not be disclosed in any publication or distribution of the decision. ❖

Limited scope retainer FAQs ... from page 7

knows or becomes aware that there is a conflict of interest.

3.4-11.4 A lawyer who provides short-term summary legal services must take reasonable measures to ensure that no disclosure of the client's confidential information is made to another lawyer in the lawyer's firm.

Commentary

[1] Short-term summary legal service and duty counsel programs are usually offered in circumstances in which it may be difficult to systematically screen for conflicts of interest in a timely way, despite the best efforts and existing practices and procedures of the not-for-profit legal services provider and the lawyers and law firms who provide these services. Performing a full conflicts screening in circumstances in which the short-term summary services described in these rules are being offered can be very challenging given the timelines, volume and logistics of the setting in which the services are provided.

[2] The limited nature of short-term summary legal services significantly reduces the risk of conflicts of interest with other matters being handled by the lawyer's firm. Accordingly, the lawyer is disqualified from acting for a client receiving short-term summary legal services only if the lawyer has actual knowledge of a conflict of interest between the client receiving short-term summary legal services and an existing client of the lawyer or an existing client of the pro bono or not-for-profit legal services provider or between the lawyer and the client receiving short-term summary legal services.

[3] Confidential information obtained by a lawyer providing the services described in rules 3.4-11.1 to 3.4-11.4 will not be imputed to the lawyers in the lawyer's firm or to non-lawyer partners or associates in a multi-discipline partnership. As such, these individuals may continue to act for another client adverse in interest to the client who is obtaining or has obtained short-term summary legal services, and may act in future for another client adverse in interest to the client who is obtaining or has obtained short-term summary legal services.

[4] In the provision of short-term summary legal services, the lawyer's knowledge about possible conflicts of interest is based on the lawyer's reasonable recollection and information provided by the client in the ordinary course of consulting with the pro bono or not-for-profit legal services provider to receive its services.

In addition to the Law Society Rules and BC Code*, what other resources are available to help lawyers act under a limited scope retainer?*

Numerous resources exist, some on the Law Society website and others through external sources. The list below is not exhaustive, but will get you started.

Law Society resources

You can connect to a free one-hour presentation by Law Society staff lawyers on CLE-TV: Limited Scope Retainers – Practice Advice and Tips, 2014. You can connect to this free presentation on the Law Society's YouTube channel, and if you watch it with another lawyer, you can apply for CPD credit. The presentation goes over the rules and highlights risks and tips.

For unique liability risks created by limited scope retainers and tips to avoid them, see Managing the Risk of a Limited Retainer (*Insurance Issues: Risk Management*, Summer 2010). It is a good summary with real-life examples.

For some risks and tips with respect to witnessing a signature, see Witnessing a signature? Stop. Read this first (*Insurance Issues: Risk Management*, Winter 2013). This resource includes real-life scenarios from insurance claim files.

The Independent legal advice checklist is annotated with risk management tips.

The Model conflicts of interest checklist assists in detecting conflicts and raising questions to help avoid problems.

For limitation period resources, see Ten Tips to Beat the Reset Clock (*Risk Management*, Summer 2013).

See Client Identification and Verification for resources that include a checklist, a sample attestation form for verification of identity for clients in Canada and a sample agency agreement for clients outside Canada, a free online course and detailed FAQs devoted to this topic.

See Model non-engagement letters (three different scenarios) that can be used if you will not be acting.

Consult a Law Society practice advisor.

Other resources

See the Family Law Unbundling Toolkit on the Courthouse Libraries BC website for resources for family law clients.

See the Practice Checklists Manual, a professional reference for BC lawyers, developed by the Continuing Legal Education Society. The checklists may assist you in organizing a record of the client's obligations and the lawyer's obligations in a limited scope retainer situation. ❖

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