The Law Society of British Columbia

2020: No. 1 • SPRING

BENCHERS' BULLETIN

Keeping BC lawyers informed

The role of a lawyer

by Craig A.B. Ferris, QC

THE OATH WE took when we became lawyers — to conduct ourselves truly and with integrity, to uphold the rule of law and to protect the rights and freedoms of all persons — is based on values that define us. Our oath has come to mind on more than one occasion these first few months of 2020, but particularly during the Cullen Commission of Inquiry into Money Laundering in British Columbia and the proposed introduction of a no-fault insurance regime.

The provincial government's plans for a no-fault insurance regime will significantly change how motor vehicle accident victims are treated. When any new legislation is made public, the Law Society will review it, as we do all government policy changes, to consider possible implications for the rule of law and determine whether the rights and freedoms of people have been compromised. We will continue to examine the impacts on the lawyers we regulate but also the impacts on British Columbians who are injured in motor vehicle accidents and currently have their disputes about fair compensation determined by the courts. We expect to have more to say in the future on details of this legislation.

What can be addressed now, however, are the troubling public statements made by the provincial government in announcing and promoting this policy shift. Media releases by the province and governing party's caucus communications point to so-called inflated awards and scapegoat lawyers and judges for ICBC's financial difficulties. There may be many reasons for introducing a no-fault scheme, but to place blame for the mismanagement of an insurance corporation at the feet of the judiciary and people who have a duty to zealously represent their clients is wrong.

Lawyers and judges carry out their respective duties based on the applicable legal principles. Judges make decisions based on objective assessment of the evidence presented to them by opposing counsel. That is the way our justice system works, and that is the way it is supposed to work. Attacks on judges and lawyers who are simply doing their jobs undermines the rule of law and confidence in our justice system — a system that affords everyone equal rights before the law. I have asked the attorney general of British Columbia to ensure the government and the governing party stop making these kinds of statements.

The role of a lawyer and the Law Society will also be part of the Cullen inquiry, which began formal hearings in February. The Law Society made its opening statement on February 24 as one of many organizations participating in the fight against money laundering. The full statement is available on the Law Society website.

The hearings have sparked some to try to revive a debate about a 2015 decision of the Supreme Court of Canada that ruled that laywers are constitutionally exempt from collecting and reporting a client's financial information to FINTRAC, an entity of the federal government. The court ruled that requiring lawyers to report to FINTRAC would interfere with the *Charter* rights of clients by requiring lawyers to breach solicitor-client privilege and by undermining the duty of undivided loyalty a lawyer owes to a client. It would also breach the *Charter* by allowing sweeping searches of law offices that hold clients' records without adequate protection for solicitor-client privilege.

Lost on these critics is that lawyers are not exempt from reporting and regulation. The court relied on the fact that the Law Society has developed and implemented a regime to regulate lawyers' conduct with respect to potential involvement in money

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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).

Strategies under way for 2020

by Don Avison, QC

WE ARE NOW into the final stretch of Strategic Plan 2018-2020. Operational plans are in place to advance the implementation of over 95 per cent of the goals set by the Benchers. Nearly all initiatives in the plan are substantially completed or well under way. The Benchers and staff of the Law Society are on a solid foundation to continue this work in 2020.

In this first quarter of the year, some parts of the plan have already required additional focus and resources. As the Cullen Commission of Inquiry into Money Laundering in British Columbia started, the Law Society produced a range of documents in January. In February, counsel for the Law Society delivered an opening statement to the Cullen Commission. In the year ahead, we expect to continue supporting the Benchers in their review of our policies and providing lawyers with the tools needed to remain vigilant against criminals looking to exploit them to launder money.

Staff has also been hard at work to implement initiatives that the Benchers approved at their December and January meetings. These include developing an online course for Indigenous intercultural competency. By fall, we aim to launch a pilot of this course. That will give us time to take feedback into account as we finalize the materials and make sure the course that we launch in 2021 is doing what it is supposed to — providing important knowledge for lawyers practising today.

The Law Society is also planning two events later this year that advance our strategic goals. Work is under way to host a forum in September for lawyers and firms to talk about mental health challenges and share solutions on how to support lawyer well-being. Plans are also under way for the fourth annual Rule of Law Lecture. Details on both events, including their dates, will be made available at a later time.

We will be communicating consultations, surveys and events to lawyers throughout the year. There are lots of opportunities for lawyers to get involved. I encourage you to stay informed by reading our publications and checking our website.❖

LAW SOCIETY'S OPENING STATEMENT TO THE CULLEN COMMISSION

The Cullen Commission of Inquiry into Money Laundering in British Columbia began Monday, February 24, with opening statements from several participants, including the Law Society. The Law Society's opening statement has been posted on the website.

The Law Society is one of many organizations participating in the fight against money laundering. As regulator of the legal profession in the province, the Law Society's mandate includes working to prevent lawyers from involvement in any dishonesty, crime or fraud — including money laundering — committed by clients or anyone else. It fulfills this mandate through rules and enforcement, law firm audits, investigation and discipline, and education of the legal profession.

The Cullen Commission is conducting hearings and is scheduled to issue its interim report in November 2020, with its final report expected in May 2021. The Law Society will continue its participation in the commission and is committed to working collaboratively with other organizations and the commission and to supporting the public inquiry process.

President's View ... from previous page

laundering. It is a responsibility that we fulfill with vigour and vigilance. As regulator of the legal profession in the province, our mandate includes working to prevent lawyers from involvement in any dishonesty, crime or fraud — including money laundering — committed by clients or anyone else. It fulfills this mandate through rules and enforcement, law firm audits, investigation and discipline, and education of the legal profession. The Law Society commits to continue working collaboratively with other organizations and the commission and to supporting the public inquiry process in order to advance the fight against money laundering.

Lawyers are an integral part of our justice system. In order for our justice system to work, public confidence in the administration of justice and the legal profession is essential. To practice law is an immense privilege that carries with it great responsibility. I am committed to doing my part to address unwarranted or opportunistic criticism of lawyers, but also to demonstrate through our participation in the Cullen Inquiry reasons for trust in our profession.❖

In memoriam

WITH REGRET, THE Law Society reports the passing of the following members during 2019:

James D. Baird
Moises A. Bardos
Don G. Campbell
S. Russel Chamberlain, QC
David C.T. Davenport
Heather Ferris
Donald R. Fiske
Paul D.K. Fraser, QC
David S. Fushtey
George C.E. Fuller
W. Paul Grier
David D. Hart
Adrian T. Jorgenson
Henry T. Kennedy
Don E. Morrison
Marcus Murphy
Sylvia S. Shelton
Craig C. Sturrock, QC
Neo J. Tuytel
Daniel A. Wark
Harvey I. Wolfson ❖

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 November 2, 2019 to February 11, 2020, the Law Society obtained written commitments from three individuals and businesses to stop engaging in unauthorized practice of law. These individuals and businesses put the public at risk by performing unregulated and uninsured legal services or misrepresenting themselves as lawyers. If they break their commitments, the Law Society may obtain a court order against them.

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

On October 23, 2019, the BC Supreme Court issued a consent order prohibiting **Mar Dolar** and **Global Fingerprinting Services Canada Ltd.**, of Vancouver, from engaging in the unauthorized practice of law. The Law Society recovered costs of $500.

On January 9, 2020, **Anant Bhatia** consented to an order permanently prohibiting him from falsely representing himself as a lawyer, counsel or any other title that connotes that he is qualified or entitled to engage in the practice of law.

On January 21, 2020, the Supreme Court of British Columbia issued an order prohibiting **Jeremy Maddock**, of Victoria, from engaging in the unauthorized practice of law or from commencing, prosecuting or defending a proceeding in any court on behalf of someone else. The Law Society was awarded its costs.

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

FROM THE LAW FOUNDATION OF BC

Law Foundation welcomes Mary Childs to the board

MARY CHILDS HAS joined the Law Foundation board of governors as the Law Society appointee for the County of Vancouver. Childs brings a wealth of relevant experience to the board. She advises all manner of purpose-driven organizations: charities, not-for-profits, co-operatives, social enterprises and values-focused businesses. She has extensive experience with the sector and provides legal advice and representation that reflect her clients' values and culture.

Childs has also held academic positions in law faculties in both Canada and the United Kingdom. She has published in academic and professional journals and has delivered papers at academic conferences. She speaks regularly to varied audiences on topics of interest to the not-for-profit and co-operative sectors.

Childs clerked for the BC Court of Appeal and articled with a large regional firm. She was a founding partner of two law firms, most recently a boutique firm with a focus on working with charities, not-for-profits and co-operatives. She has been a director of numerous charities and currently sits on the board of the BC office of the Canadian Centre for Policy Alternatives, where she is the past chair. She is a director of the BC Co-op Association and is on the steering committee of the CoopZone Legal Network, a Canada-wide network of lawyers and academics with an interest in co-op law. Childs is a part-time member of the Civil Resolution Tribunal and sits on the board of the Motor Dealer Customer Compensation Fund. She is a past member of the Law Society's former Lawyer Education Advisory Committee.❖

In brief

THANKS TO OUR VOLUNTEERS

The Benchers thank all those who volunteered their time and energy to the Law Society in 2019. Whether serving as members of committees, task forces or working groups, as PLTC guest instructors or authors, as fee mediators, event panellists or advisors on special projects, volunteers are critical to the success of the Law Society and its work.

For more on volunteer opportunities, and a list of people who served the Society in 2019, see About Us > Volunteers and Appointments.

JUDICIAL APPOINTMENTS

Justice J. Christopher Grauer, a judge of the BC Supreme Court, was appointed a justice of the BC Court of Appeal. He replaces Justice John E.D. Savage (Vancouver), who resigned effective September 1, 2019.

Peter H. Edelmann, a partner at Edelmann & Company Law Corporation in Vancouver, was appointed a judge of the BC Supreme Court. He replaces Justice Joyce DeWitt-Van Oosten (Vancouver), who was elevated to the Court of Appeal on May 6, 2019.

Jeffrey Campbell, QC was appointed a judge of the Provincial Court in Coquitlam. Judge Campbell was a Bencher for Vancouver County from 2016 until his appointment to the Bench.

Karina Sacca was appointed a judge of the Provincial Court in Victoria.

Satinder Sidhu was appointed a judge of the Provincial Court in Surrey.❖

New Appointed Benchers

THE LAW SOCIETY welcomes the appointment of Paul Barnett, Sasha Hobbs and Dr. Jan Lindsay to its board of governors. They were selected by the provincial government to serve as appointed Benchers, effective January 1, 2020.

Sasha Hobbs is the chief operating officer of the First Nations Technology Council, whose mandate is to pursue the advancement of Indigenous peoples in the digital economy. A member of the Métis Nation, Sasha was previously an executive director with the provincial government and launched the Indigenous Youth Internship Program in partnership with the province and First Nations leadership. She has served as a director at Simon Fraser University and other educational institutions.

Paul Barnett is president of the Provincial Association of Residential and Community Agencies, BC's community justice federation. Paul served as executive director of The John Howard Society of North Island from 1980 until 2007, and since then has participated in youth, community justice and Indigenous projects, including a collaboration with the Ahousaht First Nation.

Dr. Jan Lindsay has had an extensive career in post-secondary education, including teaching and administrative positions at Langara College, Selkirk College and Douglas College and was formerly president and CEO at North Island College. She was previously a director with the Knowledge Network Corporation and served as the BC director for the Association of Canadian Community Colleges. Jan holds a doctorate in organizational psychology and master's degrees in education and kinesiology.❖

New hearing panel pool members

THE LAW SOCIETY has renewed its pool of hearing panel members with the appointment of six new public representatives and seven new lawyers. These individuals will join the 23 continuing and reappointed hearing panel pool members.

The newly appointed adjudicators include Indigenous representation as well as representation from communities throughout the province. The appointments were made following a province-wide outreach campaign that attracted more than 150 applicants. The Law Society's search was assisted by a third-party recruitment firm.

New appointments to the public hearing panel pool:

Linda Berg, Burns Lake. Linda Berg is the executive director of the Lake Babine Nation. A member of the Stl'atl'imx Nation, she has served as executive director of the Boys and Girls Club of Williams Lake & District and as a panel member of the Employment and Assistance Appeal Tribunal.

David Dewhirst, Kamloops. David Dewhirst has served on multiple boards, including as director of BC Veterinary Captive Insurance Co. Ltd. and Kamloops Immigrant Services. He also served as vice-president of the College of Veterinarians of British Columbia and was a client service officer for Service Canada.

Michael Dungey, Ladysmith. Michael Dungey is a retired staff sergeant with the Calgary Police Service. Since his retirement he has served as an appeals commissioner

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Taking steps to help lawyers struggling with mental health and substance use issues

THE LAW SOCIETY is continuing to advance how mental health challenges and substance use issues are talked about and addressed in the profession. At their January meeting, the Benchers adopted seven recommendations from the Mental Health Task Force that will help current and future lawyers struggling with mental health challenges.

There is a focus on helping articled students, as studies show that new lawyers experience the highest rates of anxiety, depression and stress. The Law Society will be collaborating with BC law schools to ensure students are aware of resources as they transition from law school to practising law. To remove perceived barriers for students applying to the Law Society Admission Program, the application form was revised to remove questions about applicants' medical fitness. The Benchers determined that although the questions were well-intentioned, in 2020 there are better ways to address the question of fitness to practise law.

Another focus of the recommendations is on sharing information about mental health issues. Improving how lawyers and firms talk about mental health can help increase awareness and reduce stigma and, in turn, encourage lawyers who are struggling to seek support. Later this year, the Law Society will be hosting a forum for lawyers and law firms to share information and solutions on these issues and developing a style guide for non-stigmatizing language in its communications.

While there is a wealth of research from the United States, there is still a gap in data on the state of mental health of the BC bar. To accurately assess how these issues impact BC lawyers, the Law Society will be conducting a voluntary confidential survey. The data collected will help ensure future policies and initiatives are effective in improving outcomes for lawyers.❖

Hearing panel pool ... from page 5

for Workers' Compensation – Alberta, and the public representative for the Professional Conduct Committee for the Alberta Association of Registered Nurses.

Karen Kesteloo, Victoria. Karen Kesteloo is a chartered professional accountant and chairs the Finance & Investment Committee of the College of Chiropractors of BC. She has served on the Victoria and Esquimalt Police Board and the Royal Roads University Board of Governors and chaired multiple board committees at Coast Capital Savings Federal Credit Union.

Cyril Kesten, Sidney. Cyril Kesten recently retired as a professor of education at the University of Regina. He has served on the City of Regina Board of Revision, the Professional Practice Committee of the Chartered Professional Accountants Saskatchewan and the Discipline Committee of the Saskatchewan Registered Nurses Association.

Ruth Wittenberg, Victoria. Ruth Wittenberg is president of the BC Association of Institutes + Universities. She has served as assistant deputy minister in the Ministries of Advanced Education and Labour Market Development, Education and Human Resources.

New appointments to the non-Bencher lawyer hearing panel pool:

Catherine Chow, Richmond. Catherine Chow is vice-president legal and general counsel for Keg Restaurants Ltd. and an adjunct professor at the UBC Peter A. Allard School of Law. Her practice background is in commercial litigation.

Kimberly Henders Miller, Victoria. Kimberly Henders Miller is a senior Crown counsel with the BC Prosecution Service. She has taught the Advocacy course at the University of Victoria Faculty of Law and has served on multiple committees with the Canadian Bar Association, BC Branch.

Andrew Mayes, Cranbrook. Andrew Mayes is deputy regional Crown counsel in Cranbrook, where he supervises nine Crown and eight support staff. He has served as an international prosecutor and international judicial inspector with the United Nations Interim Administration Mission in Kosovo.

Monique Pongracic-Speier, QC, Vancouver. Monique Pongracic-Speier is a partner at Ethos Law Group LLP, where she practises in the areas of civil law and Aboriginal law. She has served as chair of the Canadian Bar Association National's International Law Section and has been a member of Lawyers' Rights Watch Canada.

William Veenstra, QC, Vancouver. William Veenstra is associate counsel with Jenkins Marzban Logan LLP in Vancouver. He is a past president of the Canadian Bar Association, BC Branch, where he served on multiple committees and working groups, including the Truth and Reconciliation Working Group.

Ardith Walkem, QC, Chilliwack. Ardith Walkem is a member of the Nlaka'pamux Nation and has practised in the area of Indigenous law since she was called to the Bar. She is currently a barrister and solicitor with Walkem and Associates Law Corporation.

William Younie, QC, Duncan. William Younie is a partner with Ridgway & Company. He is a past president and former member of the board of directors of the Lawyers Assistance Program of BC and a former president of the Cowichan Valley Bar Association.

For the complete list of hearing panel pool members, including those who have been reappointed or will continue serving their current appointment term, go to the website.❖

Frequently asked questions about LifeWorks' services

What is Lifeworks?

LifeWorks Canada Ltd. is an employee assistance program funded by the Law Society that offers free, confidential 24/7 support for issues related to mental, physical, social and financial well-being for lawyers, articled students and their immediate families.

Services include confidential consultations, access to information and resources, connections to community agencies and supports and referrals to counselling.

What types of services does LifeWorks offer?

You can call LifeWorks 24/7 to connect with an advisor who is knowledgeable about LifeWorks' services and can refer you to support and resources. You can also access a range of resources directly through the Lifeworks website and app, including online well-being tools and information, counselling services in-person or by phone, chat or live video, referrals to community support services, and workplace training.

Does LifeWorks share my information with the Law Society?

LifeWorks advisors and counsellors maintain strict confidentiality, except where disclosure is required by law (e.g., release of documents is required by a court order, a counsellor identifies that there is an imminent risk of harm to self or others, child abuse). No one at the Law Society or your workplace will know you have contacted LifeWorks or used its services unless you tell them. LifeWorks' online services and programs are secure and password protected.

You are no longer required to log in to LifeWorks through the member portal. You will not be asked to provide your membership number to LifeWorks advisors or counsellors. LifeWorks prioritizes confidentiality, including ensuring that there are no back-to-back in-person counselling appointments with others from your organization and that all email or phone contact is discreet, including non-identifying emails and voicemails.

How do I connect with LifeWorks?

Contacting LifeWorks is easy and confidential. There are three ways to contact LifeWorks, 24 hours a day, 7 days a week:

1. Phone the toll-free number, 1.888.307.0590, for a confidential in-person call.
2. Log in to login.lifeworks.com to learn more about the services Lifeworks provides, including website materials and access to a confidential online chat or in-person call:

   Username: lawsocietybc
   Password: healthy
3. Download the free app on Android or IOS and simply search for "LifeWorks." Once downloaded, open the app, click on "Log in" and enter your username (lawsocietybc) and password (healthy).

What happens when I contact LifeWorks?

When you call or use the online chat function via the website or app, a LifeWorks advisor will be your first point of contact. Advisors are trained to quickly evaluate your needs and connect you with appropriate services and/or resources to address your issue.

The advisor will open a confidential file and ask you a series of questions, including your name, date of birth and information about your concern or issue. The advisor will make a preliminary assessment of the level of care or support that may benefit you. This information will not be shared with the Law Society.

If you are seeking counselling, the advisor will match you with a counsellor within LifeWorks' network of professionals who has specialized training most appropriate for your circumstances.❖

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

Know your client – addressing questions and risks

THE RULE CHANGES to Part 3, Division 11 – Client Identification and Verification, have been in effect since January 1, 2020. It was a busy first month answering lawyers' questions. In this article I focus on some topics and questions that came up as well as two new Federation of Law Societies of Canada's resources that highlight specific circumstances in which lawyers may be vulnerable to criminals, including those who hope to dupe lawyers into assisting with money laundering and terrorist financing schemes: For more resources, see the Client ID & Verification web page, in particular the FAQS, and read New client verification and source of money requirements in the Winter 2019 *Benchers' Bulletin*.

THE STARTING POINT – WHO THE CLIENT IS AND THE RETAINER'S PURPOSE

To determine your professional responsibilities under the Law Society Rules and the *Code of Professional Conduct for British Columbia*, you should first determine who the client is and the purpose of the retainer. This may seem obvious; however, it is of fundamental importance and I find that lawyers who request practice advice have sometimes not worked through these threshold questions. Why is this important? There are several reasons.

First, who the client is and the retainer's purpose is important to determine potential conflicts, your confidentiality obligations, your own competence in the relevant practice area and whether you have adequate resources to deliver the services. The purpose helps establish whether the client is retaining you to provide legal services, which has concomitant implications for the permitted use of your trust account (Rules 3-55, 3-58.1 and 3-59 in Part 3, Division 7 – Trust Accounts and Other Client Property).

Second, but no less important, who the client is and the retainer's purpose is important for determining your Division 11 responsibilities of knowing your client, understanding the client's financial dealings in relation to the retainer and managing any risk arising from your professional business relationship (Rule 3-99(1.1)). You may quickly determine if you have suspicions about whether the proposed client is attempting to use you to assist in or encourage any dishonesty, crime or fraud and decline to act.

WHEN DIVISION 11 APPLIES

Understanding who the "client" is and the purpose of the retainer has implications for whether Division 11 applies at all or in part, whether you must merely identify the client and whether you must take the further steps to verify the client's identity and obtain and record, with the applicable date, information about the source of "money" if there is a "financial transaction." The terms "client," "money" and "financial transaction" are broadly defined in Rule 3-98. Read the definitions carefully.

With limited exceptions, Division 11 applies when you are retained by a new or existing client to provide legal services. Rule 3-99(1) states:

> **3-99** (1) Subject to subrule (2), this division applies to a lawyer who is retained by a client to provide legal services.

Let's break Rule 3-99 down into three parts: retention, legal services and exemptions.

When you are retained

You are retained to provide legal services when you agree to act. Note that you may be retained even if you have not received a money retainer in trust. If you and the client agree that you will only act if a money retainer is paid in advance, you must confirm that agreement in writing and specify a payment date (*BC Code* rule 3.6-9). If you agree to provide pro bono legal services, you are nevertheless retained.

When you provide legal services

It will usually be obvious if you provide legal services (e.g., giving legal advice, acting for a party in court, drawing a will, preparing an affidavit for use in a proceeding, acting on a conveyance, drawing a document relating to an incorporation). If you are unsure if you are providing legal services, refer to the definition of "practice of law" in the *Legal Profession Act* or seek legal advice (practice advisors do not provide legal advice).

Division 11 rules generally do not apply to a lawyer who acts as a neutral mediator of a dispute for parties to a mediation (lawyers are not permitted to represent opposing parties in a dispute, even with consent (Code rule 3.4-3)). Neither do the rules apply to lawyers who perform the adjudicative function of being an arbitrator of a dispute for parties to an arbitration process. If you receive prepaid fees for acting as either a mediator or an arbitrator, you must not deposit such fees into your trust account, because mediation by itself and arbitration are not the "practice of law" (Rule 3-58.1). If you open an account for such deposits, make it clear to your financial institution that the account is not a lawyer's trust account regulated by the Law Society of BC. You may deposit the prepaid fees into your general account or another account.

Rule 3-99(2) exemptions to the application of Division 11

If you have agreed to provide legal services, Rule 3-99(2) provides exemptions to the application of some Division 11 rules:

> **3-99** (2) Rules 3-100 to 3-108 and 3-110 *do not apply* when a lawyer provides legal services
>
> (a) on behalf of his or her employer, or
>
> (b) in the following circumstances *if no financial transaction is involved*:
>
> (i) as part of a duty counsel program sponsored by a non-profit organization;
>
> (ii) in the form of pro bono summary advice. [emphasis added]

For example, if you are an in-house counsel employee to XYZ Electric Planes Ltd., you provide legal services on behalf of your employer; you do not provide legal services to the general public through XYZ. Subrule (2)(a) provides that Rules 3-100 to 3-108 and 3-110 do not apply (generally, the identification, verification, source of money, record-keeping and retention and monitoring rules). Rule 3-109 (Criminal activity, duty to withdraw) always applies. Likewise, a lawyer is never exempted from the application of Code rules 3.2-7 (Dishonesty, fraud by client) and 3-2-8 (Dishonesty, fraud when client an organization) and 3.7-7 (Obligatory withdrawal).

The subrule (2)(b) exemptions are less broad than the employee exemption and turn on whether a "financial transaction" is involved. If, for example, you provide one hour of pro bono legal services to a client in circumstances where there is no "financial transaction", you are exempted from identification, verification, source of money obligations, record-keeping and monitoring. If, however, you provide one hour of pro bono legal services for the same client that includes giving instructions on the client's behalf in respect of the transfer of money (e.g., regarding a client's financial dispute with an organization), the Division 11 rules apply.

Rule 3-101 exemptions to the verification and source of money rules

Assuming you are retained to provide legal services, unless exempted under Rule 3-99(2), you must identify your client (Rule 3-100). In addition, if there is a "financial transaction" you must verify the client's identity, obtain the source of money information, keep records and engage in periodic monitoring. However, Rule 3-101 provides some limited exemptions from the verification of identity and source of money requirements for some clients, organizations and payments. Use exemptions cautiously, considering the risks.

How do the Rule 3-101 exemptions work and when might you use one? First, be aware that more than one "financial transaction" may be involved when acting for a client. Just because one "financial transaction" exists to which an exemption applies does not mean that exemption absolves you from verifying your client's identity and obtaining source of money information with respect to all financial transactions that may be involved. It doesn't work that way. For example, you may receive money paid from a trust account of an Alberta lawyer, a "financial transaction" for which there is an exemption in Rule 3-101(b)(ii); however, that exemption does not include an exemption for paying out the money to your client as part of a settlement, unless another exemption exists.

Second, an understanding of the Rule 3-98 definitions is key. For example,

Rule 3-101(a) provides that Rules 3-102 to 3-106 do not apply if your client is a "financial institution," "public body" or a "reporting issuer" (defined terms). Further, those rules do not apply to the individual who instructs you on their behalf. So if your client is a "public body," you are not required to verify that client's identity nor ask about its source of money. You are also exempted from verifying the identity of the instructing individual. Why? Because the risk is generally low. If, however, you determine that something is suspicious, you should obviously perform more due diligence.

Note that on January 1, 2020, the former definition of "public authority" was rescinded and replaced with a new, narrower definition of "pubic body." Thus, an organization that qualified as a "public authority" in 2019 may not qualify as a "public body" in 2020.

Another frequent question concerns the professional fees exemption. If you receive money for your "professional fees" (includes a retainer) from client Jane Doe and payments for these fees are the only "financial transaction" involved, you are not required to verify the client's identity and obtain information about the source of money (Rule 3-101(b)(iv)(D)). However, you may have another good reason for doing so, including suspicious circumstances that require additional due diligence (e.g., client wants to pay your fees in cash). Also, remember that the Part 3 Division 7 rules apply with respect to source of funds requirements separately from the Division 11 rules (e.g., Rules 3-68 and 3-69).

Finally, some lawyers have expressed a desire to routinely verify the identity of every client regardless of whether there is a "financial transaction" requiring it. On the one hand, this seems an attractive way to manage risk; however, routine verification is inappropriate. If the Division 11 rules do not require you to verify a client's identity, you should have a good reason for doing so. Consider privacy issues. Keep in mind that when you obtain identification and verification information and documents, you must securely retain it for the requisite period (Rules 3-107, 10-3 and 10-4 and Code section 3.5) until you can safely destroy it in accordance with your retention policy and applicable retention rules.

RULE 3-104(7) – PREVIOUS VERIFICATION BY AGENT

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. Subrule (7) was added to Rule 3-104, effective January 1, 2020, permitting lawyers to rely on an agent's previous verification of an individual client in the following circumstances:

> **3-104** (7) A lawyer may rely on an agent's previous verification of an individual client if the agent was, at the time of the verification
>
> (a) acting in the agent's own capacity, whether or not the agent was acting under this rule, or
>
> (b) acting as an agent under an agreement or arrangement in writing entered into with another lawyer required under this division to verify the identity of a client.

You must have an agreement or arrangement with the agent in writing if you wish to rely on an agent's previous verification of an individual. In follow-up, the verification information that you obtain from the agent must match what the individual client provided to you when you obtained their basic identification information. You must satisfy yourself that the information from the agent is valid (authentic and unaltered) and current (not expired) and that the agent verified the individual's identity through a permitted method (e.g., government-issued photo identification). If, for example, the agent used an expired driver's licence to verify the individual's identity, this is not acceptable. Note the date that you receive the agent's confirmation of verification, as this relates to whether the information is recent and the timing within which verification must take place with respect to the "financial transaction" (Rule 3-105). FAQs with respect to using an agent and a sample agreement with an agent for verification of identity are published on the Client ID & Verification web page.

RISK ADVISORIES AND RISK ASSESSMENT CASE STUDIES

Lawyers must be savvy, sharp-witted explorers of information, using experience, intelligence, research, rules and guidelines and common sense to practise defensively and manage the risks of providing legal services to diverse clients and their circumstances. Two new Federation of Law Societies' resources assist lawyers working in practice areas in which they may be vulnerable to criminals, including those who hope to dupe lawyers into assisting with money-laundering and terrorist financing schemes: Risk Advisories for the Legal Profession (December 2019) and Risk Assessment Case Studies for the Legal Profession (February 2020).

Risk advisories – The December 2019 risk advisories address risks in five areas:

- real estate
- shell corporations
- private lending
- trusts
- litigation.

Each risk advisory includes a checklist with two main parts: (1) client risks and (2) transaction risks. As reports by Peter M. German, QC (retired RCMP deputy commissioner) and an expert panel led by Maureen Maloney, QC (SFU professor and former deputy attorney general) have detailed, real estate is a vulnerable sector. Accordingly, below are some extracts edited from the real estate risk advisory.

Real estate client risks – Some examples of real estate client risks may include any of the following:

- The client uses a post office box or general delivery address where other options are available.
- A party to the transaction is a foreign buyer, either an individual or a company, notable especially if on a watch list, whose only connection to Canada is the real estate transaction.
- The client refuses to provide their own name on documents or uses different names on offers to purchase, closing documents and deposit receipts.
- The lawyer experiences difficulty obtaining necessary, reliable information to identify the client and verify the client's identity.
- The client insists on choosing the agent if an agent is being used to verify identity.

- The client does not care about the property, price, mortgage interest rate, legal fees or brokerage fees, and offers to pay higher than usual legal fees.
- The client is out of sync with the property (e.g., occupation, personal wealth, level of sophistication).
- A stranger who appears to control the client attends to sign documents.
- The client may be contacted only or primarily by email.
- The company purchasing the real estate has a complex ownership structure.
- The head office of a corporate client is or has been recently changed to a non-existent address or one that is highly unusual or lacks credible explanation.
- The client has been named in the media as being involved with criminal organizations and is purchasing a residential property.

Real estate transaction risks – Some examples of real estate transaction risks may include the following:

- Funds are directed to parties with no apparent connection to the borrower or the property.
- Repeat activity occurs on a single property or for a single client. The title shows one or more recent transfers, mortgages or discharges.
- The transaction location is distant from the lawyer's office.
- A purchaser of income-generating property has no concern for generating profit by filling vacancies or by adjusting rent or lease rates.
- The sale is presented as a "private agreement" — no agent is involved, or the named agent has no knowledge of the transaction.
- Unusual adjustments are made in favour of the vendor — the transaction involves a large vendor take-back mortgage, or an existing mortgage on a purchased property is assumed by another individual without involvement of a financial institution.
- Transactions involve a power of attorney or are carried out on behalf of minors, incapacitated persons or others who may not have sufficient economic capacity.
- The transaction involves legal entities when there does not seem to be any relationship between the transaction and the activity carried out by the buying company or when the company has no business activity.
- An accelerated repayment of a loan or mortgage occurs shortly after the deal is completed even if penalties are incurred.
- Transactions are not completed in seeming disregard of a contract clause penalizing the buyer with loss of the deposit if the sale does not go ahead.

The above real estate client risks and transaction risks are not exhaustive; more risks are set out in the actual checklist.

Risk management case studies – Next, let's turn to the risk assessment case studies. The case studies feature various scenarios and include commentary and red flags, including an appendix with a quick reference guide of red flags.

The February 2020 case studies have five themes:

- misuse of trust accounts;
- purchases and sales of real estate property and other transactions;
- creation and management of trusts and companies;
- managing client affairs and making introductions;
- disputes and litigation.

The case studies are too long to set out here, but when you review them you will see that many relate to purchase and sale transactions.

I encourage you to review the case studies and the risk advisories, paying particular attention to the areas in which you practise.

FOR MORE INFORMATION

If you have questions about client identification and verification or the content of this article, you are welcome to contact me at bbuchanan@lsbc.org or 604.697.5816. Please contact an auditor for trust account and general account questions at 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.

◆

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

◆

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

◆

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

JURICERT PASSWORD

A compliance audit revealed that a lawyer disclosed his Juricert password to his assistant and permitted her to affix his personal digital signature on documents filed in the Land Title Office. The lawyer admitted that his conduct was contrary to his Juricert agreement, Part 10.1 of the *Land Title Act*, Law Society Rule 3-64(8)(b) [now Rule 3-64.1] and rule 6.1-5 of the *Code of Professional Conduct for British Columbia*. The lawyer advised a conduct review subcommittee that he immediately changed his Juricert password when it came to his attention that it should not be shared. He has also made changes to his practice to ensure continued compliance with the rules. (CR 2020-01)

CLIENT ID AND VERIFICATION

A compliance audit revealed that a lawyer failed to comply with the client identification and verification rules on four face-to-face real estate transactions involving individual and corporate clients. In particular, the lawyer failed to review and retain copies of the appropriate identification documents, including each new file for repeat clients. He also failed to obtain the independent source documents (Rule 3-102(1)) and the information for organizations to verify the identity of his clients (Rule 3-103). The lawyer has acknowledged the importance of the client identification and verification rules and has made the appropriate changes to his practice. (CR 2020-02)

SHARP PRACTICE

During the course of representing a client in a civil claim, a lawyer improperly disclosed information that he knew or ought to have known was subject to settlement privilege, contrary to rules 2.2-1 and 7.2-2 of the *Code of Professional Conduct for British Columbia*, which include the duty to conduct oneself with integrity, to uphold the standards of the legal profession and to avoid sharp practice. He intentionally provided the privileged information in the hopes of obtaining a favourable settlement for his client. The lawyer acknowledged that he used the settlement offer improperly, and a conduct review subcommittee recommended that the lawyer consider further education on professional ethics, on top of that required by mandatory Continuing Professional Development. (CR 2020-03)

BREACH OF UNDERTAKING

While representing the purchasers in a real estate transaction, a lawyer breached a deemed undertaking to pay out commissions to two realtors, contrary to rules 7.2-11 and 7.2-13 of the *Code of Professional Conduct for British Columbia*. His clients had possible claims against the real estate agents, and the lawyer refused to pay out the commissions until the dispute was resolved. He ultimately sent the funds to the vendor when the vendor's lawyer insisted he comply with his undertaking. The lawyer has confirmed that, in future, he will treat compliance with undertakings as an absolute requirement and he will advise his clients that he cannot breach an undertaking even if it is in their interests to do so. He further committed to seek guidance from a Practice Advisor or Bencher in the future, if needed. (CR 2020-04)

INDUCEMENT TO WITHDRAW CRIMINAL CHARGES

A lawyer represented the victim of an assault in a civil action for damages against the accused. There was a concurrent criminal proceeding based on the same event. In a letter to the accused, the lawyer offered to have his client ask the Crown drop the criminal charges in exchange for a monetary settlement of the civil action. The lawyer's conduct was contrary to rule 3.2-6 of the *Code of Professional Conduct for British Columbia*, which states that a lawyer is obliged to obtain the consent of the Crown prior to entering into settlement discussions where valuable consideration is offered in exchange for influencing the Crown's conduct of a criminal charge. The lawyer acknowledged to a conduct review subcommittee that he lacked familiarity with the rule and has since completed a comprehensive review of the Code. In future, he will review the Code and consult with a Practice Advisor, Bencher or colleague. (CR 2020-05)

BREACH OF NO-CASH RULE

A lawyer accepted cash in an aggregate amount of $10,000 in relation to a real estate transaction, contrary to Law Society Rule 3-59(1), (3) and (6). He did not realize that he had breached the rule until he filed his trust report. The firm self-reported the breach in a written report to the executive director. The lawyer admitted that he should have been more aware of the rules for accepting cash. He was under stress to complete the real estate transaction because he feared it might collapse and also because of a personal matter. The lawyer has addressed the issue by implementing a procedure in which cash receipts in excess of $7,500 are flagged, and he has arranged for formal quarterly training for him and his staff. He also attends sessions with the Lawyers Assistance Program to help him deal with stress-related issues regarding both his practice and his private life. (CR 2020-06) ❖

Discipline digest

BELOW ARE SUMMARIES with respect to:

- Homayoun Sebastian Nejat
- Glenn Arthur Laughlin
- Susan Yon Soo Kim
- James Anthony Comparelli
- Michael Wilson Wayne Atmore
- Glen Cameron Tedham
- Tova Grace Kornfeld
- Crystal Irene Buchan
- Seanna Michelle McKinley
- Daniel Kay Lo
- James Leslie Straith
- Amarjit Singh Dhindsa
- Andrew James Liggett

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

HOMAYOUN SEBASTIAN NEJAT

Vancouver, BC

Called to the bar: June 1, 2010

Voluntary withdrawal of membership: November 26, 2018

Discipline hearing: March 12, 2019

Admission and undertaking accepted: October 24, 2019

Panel: Lisa J. Hamilton, QC, chair, Ralston S. Alexander, QC and Carol J. Gibson

Decision issued: May 6, 2019 (2019 LSBC 16)

Counsel: Kathleen M. Bradley for the Law Society; Michael D. Shirreff for Homayoun Sebastian Nejat

APPLICATION FOR JOINDER

On November 20, 2018, Homayoun Sebastian Nejat brought an application, pursuant to Law Society Rule 4-22, that four citations be joined and heard in one hearing.

The parties agreed that it would be more efficient and less costly for the citations to be heard together. Nejat further suggested that it would be prejudicial not to have the matters heard together, in that not doing so ran the risk of inconsistent outcomes across the four citations, which all shared a common issue.

The legal test that was applied is set out in *Robak Industries Ltd. v. Gardner*, 2006 BCSC 1628. An analysis of this test indicated that joinder was warranted. Although the citations relate to different alleged conduct and originate from different complainants, the underlying themes are similar, and there is a unifying issue throughout. There will be substantial savings, both in terms of experts' time and fees as well as efficiency, in hearing the matters together. Moreover, there is a risk that different panels might ascribe different weight to, or make differing findings regarding, the unifying issue.

The president's designate granted the application, determining that joining the citations is neither prejudicial nor unfair to Nejat, and the public interest will be served by an expeditious and efficient disposition of the four citations in one hearing (2019 LSBC 06).

FACTS

Nejat acted for a client regarding an appeal of a Provincial Court family law matter. Nejat filed a notice of appeal with the BC Supreme Court, following which standard directions require that within 45 days the appellant, among other things, file transcripts of the order under appeal and a written outline of grounds for the appeal, procure a hearing date and file a notice of hearing.

Approximately seven weeks after filing the notice of appeal, Nejat told his client that a written outline of the grounds for appeal had been sent to the court for filing, when in fact no such outline had been submitted. In numerous communications with his client in ensuing weeks and months, Nejat offered multiple reasons for not procuring a hearing date, including problems with the reservation system, travel and a trial. Approximately seven months after Nejat filed the notice of appeal, counsel for the opposing party filed a notice of application to dismiss the appeal, on the basis that Nejat had failed to file or serve transcripts, failed to file a written outline of the grounds for appeal and failed to procure a hearing date.

Nejat asked for an adjournment of the application to dismiss the appeal and a hearing date was set. Nejat informed his client that a hearing date had been set but did not inform the client that the purpose of the hearing was to hear the opposing party's application to dismiss the appeal. Nejat appeared at the hearing with no written materials prepared either in support of an application for an adjournment or in response to the application for dismissal of the appeal. At the hearing, Nejat told the court he had instructions to bring an application to extend the time to perfect his client's appeal. The court refused the adjournment application and dismissed the appeal.

DETERMINATION

The hearing panel found that Nejat misled his client by stating he had sent a written outline to court when he had not, failed to advise his client that the opposing counsel had filed an application for dismissal of the appeal and failed to tell his client that the purpose of the hearing that had been set was to hear the opposing party's application to dismiss the appeal. The panel also found that Nejat had represented to the court that he had instructions from his client to apply to extend the time to perfect his client's appeal, when he did not have such instructions. The panel further found that Nejat failed to provide his client with the quality of service that is expected of a competent lawyer by failing to keep his client reasonably informed

about the status of the appeal, to answer his client's requests for information and documents, to answer within a reasonable time communications from his client, to ensure work on the appeal was done in a timely manner and to provide his client with complete and accurate information about the client's matter.

The panel found that all of the above constituted professional misconduct.

ADMISSION OF MISCONDUCT AND UNDERTAKINGS

AGREED FACTS

Citation authorized December 7, 2017, amended March 6, 2018

In the course of acting for a client regarding an appeal of a Provincial Court family law matter, Nejat misled his client by stating that a written outline had been sent to the court for filing when it had not been, failing to advise his client that opposing counsel had filed an application for dismissal of the appeal, and telling his client that a hearing had been set to "determine the issue of perfecting the appeal" when the date had been set to hear the opposing party's application to dismiss the appeal. Nejat represented to the court that he had instructions to bring an application to extend the time to perfect his client's appeal when he knew he did not have those instructions. He also failed to provide his client with information about the file, answer client communications and ensure that work was done in a timely manner.

Citation authorized June 7, 2018

In a trial at which Nejat represented a client in relation to a business agreement with a third party, the judge rejected the client's arguments and found that there were significant problems with the agreement. The client testified that he had not consented to changes that had been made to the termination clause of the agreement and blamed Nejat for not paying attention to those changes. Nejat did not recognize that he was in a conflict of interest and did not recommend to the client that the client obtain independent legal advice.

Nejat appealed the decision at his client's instruction, without advising the client to obtain independent legal advice about Nejat's ability to continue acting in the matter. For approximately one year Nejat failed to take steps to advance the appeal, failed to answer his client's requests for information about the appeal and misled his client in relation to the appeal. Nejat sent the client an email while he was administratively suspended by the Law Society, without advising the client that he was suspended.

Citation authorized September 20, 2018, amended October 3, 2019

In the course of representing a client in a spousal sponsorship application to Immigration, Refugees and Citizenship Canada (IRCC), Nejat misappropriated or improperly withdrew funds, failed to deposit trust funds received by him into a pooled trust account as soon as practicable, failed to promptly record receipt of the trust funds within seven days and failed to immediately deliver a bill or issue to the client a receipt for funds received. Nejat made statements to his client that he knew were false or misleading, failed to take steps on his client's file, failed to advise his client that he was suspended from the practice of law, failed to advise his locum of the existence of his client's file and practised law while suspended.

In the course of representing another client in a spousal sponsorship application to IRCC, Nejat failed to deposit his client's retainer into a pooled trust account as soon as practicable, failed to promptly record in an account record funds received from his client and failed to immediately deliver a bill or issue to the client a receipt for funds received. He also made false or misleading statements to his client, failed to take steps on his client's file, failed to provide his client with complete and accurate information, failed to advise his client that he was suspended from the practice of law, and failed to advise his locum of the existence of his client's file. He also took steps on his client's file while suspended from the practice of law.

Citation authorized September 20, 2019

In relation to his client, Nejat engaged in activity that he ought to have known assisted in dishonesty, crime or fraud, by disbursing funds from his trust account without first taking reasonable steps to verify the identity of his client, and failed to obtain, record and verify client identification information. Nejat misappropriated or improperly withdrew some or all of the amount of $29,000, by withdrawing those funds from trust and using them when he was not entitled to the funds.

Nejat engaged in the practice of law while suspended and failed to provide his locum with complete and accurate information about the status of all of his client files.

In relation to another client, Nejat engaged in the practice of law while suspended and made misrepresentations to the Law Society that he had not dealt with any client files on a particular day.

Citation authorized February 28, 2019

In relation to one client, Nejat misappropriated or improperly withdrew some or all of the amount of $135,106.38 in client trust funds. He provided falsified bills to the Law Society in relation to this client and made a misrepresentation to the client.

In relation to a second client, Nejat misappropriated or improperly withdrew some or all of the amount of $125,000 in client trust funds.

Medical issues and other mitigating circumstances

Nejat provided the Law Society with medical reports that diagnosed Nejat with significant health issues that helped explain, but did not justify, his misconduct. The medical reports also outlined the steps Nejat had taken to address his health issues.

ADMISSION AND UNDERTAKING

Nejat admitted that his conduct constituted professional misconduct contrary to the *Legal Profession Act*. He voluntarily withdrew membership in the Law Society and undertook for a period of 12 years from November 26, 2018:

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

In making its decision, the Discipline Committee considered Nejat's professional conduct record, which included a prior citation for similar misconduct, two administrative suspensions and recommendations from the Practice Standards Committee.

GLENN ARTHUR LAUGHLIN

Port Coquitlam, BC

Called to the bar: May 17, 1996

Hearing date: July 23, 2019

Panel: Elizabeth J. Rowbotham, chair, Lindsay R. LeBlanc and Mark Rushton

Decision issued: December 4, 2019 (2019 LSBC 42)

Counsel: J. Kenneth McEwan, QC and Samantha Chang for the Law Society; Henry C. Wood, QC for Glenn Arthur Laughlin

FACTS

Glenn Arthur Laughlin was corporate counsel for a company whose initial shareholders were WD and RE. After a restructuring, shares were issued to a company owned by WD and KS and to another company owned by RE and ME.

In addition to continuing as corporate counsel for the company, Laughlin prepared wills for RE and ME, acted for RE and ME in their purchase of a new home and acted for WD in the sale of WD's and KS's home.

WD and KS separated and commenced divorce proceedings. WD had substance abuse issues. As corporate counsel for the company, Laughlin had regular conversations with RE and ME, and while acting for WD in divorce proceedings, he also exchanged emails with KS. In these communications Laughlin discussed WD's addiction issues.

Laughlin met with WD and discussed proposed rehabilitation treatment. At Laughlin's suggestion, WD executed a power of attorney, appointing Laughlin as his attorney to make decisions in relation to his financial affairs.

Laughlin discussed the possibility of RE and ME buying WD's shares in the company to pay for rehabilitation treatment. RE and ME agreed to advance $25,000 for WD to attend a treatment program and to treat the funds as an advance toward the purchase of WD's shares.

Laughlin drafted share sale agreements. In October 2014 WD expressed dissatisfaction with the arrangement, and Laughlin took no further steps to obtain a share sale as it had been proposed to that point. Ultimately the company advanced $25,000 for WD to attend a rehabilitation program.

In April 2016 following a hearing for the division of family assets, KS was awarded half of WD's shares in the company and related companies.

In July 2016 ME forwarded Laughlin a portion of an email from WD in which WD proposed selling his shares to RE and ME for $220,000. Laughlin did not advise any of the shareholders to obtain independent legal advice.

In June 2017 ME advised that ME and RE had no interest in buying WD's shares, but that the company would redeem his shares.

In August 2017 Laughlin advised ME that he was in a conflict of interest because he had represented WD in the divorce. After meeting with the Law Society for an investigative interview, Laughlin advised KS and WD that he could no longer be involved in the share sale discussions.

The parties ultimately reached an agreement in respect of the sale of shares. ME requested that Laughlin prepare the necessary documents for the transfer of the shares, and WD and KS agreed. This was the only occasion on which WD provided his express consent to Laughlin acting on the company's behalf in respect of the 2016 proposed sale of WD's shares.

DETERMINATION

Laughlin admitted, and the hearing panel agreed, that his conduct constituted professional misconduct.

The panel considered that Laughlin did not act out of malice and did not personally gain from his conduct. He was trying to help WD through a difficult time but, in doing so, he placed himself in a conflict of interest.

DISCIPLINARY ACTION

The panel ordered that Laughlin pay:

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

The Law Society has applied for a review of disciplinary action.

SUSAN YON SOO KIM

Vancouver, BC
Called to the bar: August 31, 2000
Ceased practising (standard undertaking): December 5, 2018
Hearing date: September 25, 2019
Panel: Jamie Maclaren, QC, chair, Gavin Hume, QC and R.J. (Bob) Smith
Decision issued: December 4, 2019 (2019 LSBC 43)
Counsel: Jaia Rai for the Law Society; Jeffrey P. Scouten for Susan Yon Soo Kim

FACTS

A client retained Susan Yon Soo Kim in a family matter that had been approved for legal aid. In the retainer agreement, Kim specified that the client would "pay the difference that legal aid is not able to cover of my hourly rate." Kim made one request to the Legal Services Society for payment of an expedited transcript of a hearing. That request was denied because Kim did not properly submit her payment request. Kim subsequently told the client that the legal aid system makes it difficult to receive payment from LSS first and then bill the client for the remaining balance, so Kim would therefore bill the client first, then "allow legal aid payments to reduce your legal fees, once received." Kim repeatedly told the client she would seek partial payment from LSS for fees and disbursements, although she never sought payment from LSS, beyond the denied request for reimbursement of transcript costs.

After receiving several account statements and requests for payment from Kim, the client contacted LSS and was told that Kim had not sought payment for any of her fees and that it was illegal for Kim "to charge both sides." The client subsequently requested a termination of the retainer and transfer of his file to a new lawyer. Kim continued to seek payment from the client. LSS told Kim that if she reimbursed the client for fee payments he had made to date, Kim could then bill LSS for the services rendered. Kim chose not to reimburse the client and sought payment of an additional $30,000 from the client. The client declined to pay any part of the balance and Kim took no further steps to collect the balance.

Representing a different client in a different family matter, Kim prepared an affidavit to be sworn by the client. She commissioned the affidavit in the usual prescribed manner, with a duly signed jurat and signature page. The client subsequently requested a revision to the affidavit. Kim prepared a revised version, which she sent to the client by email. The client responded by email that the revision "looks good." Kim appended the originally signed jurat and signature page to the revised version, and filed the revised affidavit with the court.

DETERMINATION

Kim admitted to misleading a client and altering an affidavit after it had been sworn and that both actions constitute professional misconduct.

The panel found that Kim committed professional misconduct as admitted. It concluded that misleading the client displayed a serious lack of integrity and had negative consequences for the client, who felt it necessary to retain new counsel.

It also found that Kim failed to act with integrity by altering the sworn affidavit and then filing it and relying on it in court. This conduct compromised the integrity of the court system and brought the integrity of the profession into disrepute.

DISCIPLINARY ACTION

The panel ordered that Kim:

1. be suspended for one month; and
2. pay costs of $7,500.

JAMES ANTHONY COMPARELLI

Vancouver, BC
Called to the bar: May 17, 1991
Voluntary withdrawal of membership: November 27, 2017
Written materials: August 7, 2019
Panel: Michelle D. Stanford, QC, chair, Laura Nashman and Nina Purewal
Decision issued: January 16, 2020 (2020 LSBC 02)
Counsel: Mandana Namazi for the Law Society; Jaia Rai for James Anthony Comparelli

FACTS

A client and her husband retained James Anthony Comparelli as their family solicitor. In late 2006 or early 2007, Comparelli prepared a will for the client that appointed Comparelli as executor and trustee and included a $40,000 gift to him. Comparelli did not refer the client to another law firm for independent legal advice.

When the client died in 2014, Comparelli was granted administration of the estate. Comparelli was entitled to $332,773.91 in executor fees. Prior to receiving signed first releases from all the residual beneficiaries, Comparelli withdrew $137, 030.04 from the trust account for his executor fees. After receiving the signed first releases, Comparelli withdrew an additional $236,208.30 from the trust account in payment of his executor fees. These executor fee payments were $40,464.43 in excess of the fees approved by the residuary beneficiaries.

At the time of the withdrawals, Comparelli knew the following amounts were over and above the amount of his approved executor fees, and he withdrew the funds in an attempt to reconcile the accounting: $3,000 representing the amount owing to a beneficiary Comparelli could not locate, and $26,300.24 representing funds held in trust that Comparelli tried but was unable to reconcile.

In July 2017 the Law Society notified Comparelli that he would be the subject of a compliance audit. Comparelli then repaid the $40,464.43 fee overpayment into his trust account, self-reported his misconduct to the Law Society, returned to his trust account the executor fees

paid into his general account and retained an estate lawyer to help him complete the administration of the estate. Comparelli took steps to wind down his practice, and in November 2017 he terminated his membership with the Law Society and became a former lawyer.

DETERMINATION

The hearing panel found that Comparelli made clear, deliberate and calculated withdrawals of a significant amount of money over a number of months, which he used to satisfy his personal debt. He knew he was not authorized to withdraw the funds, and he deprived the residuary beneficiaries of funds to which they were entitled. The amount of funds withdrawn from trust and the intentional misappropriation and misrepresentation strike at the core of the solicitor-client relationship. In addition, he acted in a conflict of interest by preparing a will under which he was to receive a testamentary benefit.

The hearing panel accepted Comparelli's admission that his conduct demonstrates a deliberate and prolonged course of misappropriation. While Comparelli cooperated with the Law Society investigation, his acknowledgement of misconduct, remedial steps and winding up of his practice all followed notice of an impending compliance audit.

DISCIPLINARY ACTION

The panel ordered that Comparelli:

1. be disbarred; and
2. pay costs of $1,000.

MICHAEL WILSON WAYNE ATMORE

Vancouver, BC
Called to the bar: May 23, 2001
Written materials: September 16, 2019
Panel: Tony Wilson, QC, chair, Nan Bennett and Carol Roberts
Decision issued: January 30, 2020 (2020 LSBC 04)
Counsel: Angela R. Westmacott, QC for the Law Society; Andrea N. MacKay for Michael Wilson Wayne Atmore

FACTS

Michael Wilson Wayne Atmore authorized the withdrawal of client trust funds to pay fees or disbursements incurred on behalf of 21 clients without first preparing and immediately delivering an invoice to the clients. The amounts totaled $2,753.39. He did so to clear each trust balance in circumstances where he had performed additional work or incurred additional disbursements.

ADMISSION AND DETERMINATION

The panel accepted Atmore's admission that, by authorizing the withdrawals, he engaged in professional misconduct.

DISCIPLINARY ACTION

In considering the disciplinary action, the panel made the distinction between improper withdrawal of trust funds and misappropriation. It found that Atmore was motivated by expediting administrative procedures and his actions did not constitute misappropriation. He was beneficially entitled to the funds that were withdrawn. He also accepted his responsibility for his breach of the rules.

Atmore proposed a fine of $2,500, costs of $1,000, a requirement to take the Law Society accounting course and to have the admissions on his professional conduct record.

The panel accepted Atmore's proposed sanctions and ordered that he:

1. pay a fine of $2,500;
2. pay costs of $1,000; and
3. take the Law Society accounting course.

GLEN CAMERON TEDHAM

Vancouver, BC
Called to the bar: August 21, 2015
Ceased membership: January 1, 2019
Admission and undertaking accepted: January 30, 2020
Counsel: Robert Cooper, QC and Heather Doi for the Law Society; Wally Oppal, QC for Glen Cameron Tedham

AGREED FACTS

Glen Cameron Tedham committed professional misconduct in relation to his work with 10 clients. He misappropriated trust funds (from clients and/or a firm) in nine matters, with amounts ranging from $2,000 to more than $50,000.

He knowingly made false or misleading representations, including billing a client for work he had not done, fabricating a client's email address and an email from a client, and taking his brother's financial information without his knowledge or consent.

He failed to account to his firm for his receipt and disbursement of retainer funds from clients. He breached trust accounting rules and deposited money into a personal account before billing the client. He submitted loan applications on behalf of his clients without their knowledge and falsely represented that he was the client.

On multiple occasions, he engaged in the practice of law while suspended, and asked for further retainers from his clients while suspended.

ADMISSION AND UNDERTAKING

Tedham admitted that he committed professional misconduct, as detailed above. In accepting Tedham's admissions and undertakings, the Discipline Committee considered evidence of his significant health conditions from a medical expert, as well as his professional conduct record which includes limitations in his articles and in practice.

Tedham was administratively suspended from the practice of law on February 9, 2018 for failure to produce requested documents and

information during the course of the investigation. Since January 1, 2019, he has been a former member of the Law Society as his membership lapsed due to non-payment of fees.

Tedham agreed to undertake for 12 years, commencing on February 3, 2020:

- 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;
- not to apply for readmission to the Law Society or elsewhere within Canada prior to February 3, 2032;
- not to apply for membership in any other law society prior to February 3, 2032, without first advising in writing the Law Society; and
- 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.

Should Tedham wish to apply for reinstatement to the Law Society when his undertaking expires in 2032, he will have to satisfy the Law Society's Credentials Committee that he is of sufficiently good character and repute to practise law in BC.

TOVA GRACE KORNFELD

Vancouver, BC

Called to the bar: September 13, 1983

Written materials: October 17, 2019

Panel: Pinder K. Cheema, QC, chair, John Lane and Shona A. Moore, QC

Decision issued: February 10, 2020 (2020 LSBC 05)

Counsel: Angela R. Westmacott, QC for the Law Society; Howard A. Mickelson, QC for Tova Grace Kornfeld

AGREED FACTS

Between 2013 and 2014, Tova Grace Kornfeld arranged loans for three long-standing clients in respect of three separate transactions. Each of the clients was in need of immediate financial assistance, which Kornfeld directly or through her family provided on a short-term basis. In each case, Kornfeld was attempting to assist the client with bridge financing. Each of the three clients repaid the funds with interest, as planned.

The transactions were identified in the course of a routine compliance audit. At no time did Kornfeld seek to extract or obtain any undue advantage from these long-standing clients. However, she failed to disclose her conflict of interest to the clients, to recommend and require that they receive independent legal advice and to obtain their informed consent.

ADMISSION AND DETERMINATION

Kornfeld admitted, and the hearing panel agreed, that her conduct constituted professional misconduct.

The panel determined that Kornfeld ought to have recognized that she was in a conflict of interest with her clients and should have taken the steps set out in the *BC Code* to address that conflict. She failed to do so, which was a marked departure from the conduct the Law Society expects from a lawyer.

The panel accepted Kornfeld's statement that she was motivated by a desire to assist her clients; however, she and her family did obtain a financial benefit from arranging the loans.

DISCIPLINARY ACTION

The panel accepted Kornfeld's proposed disciplinary action and ordered that she:

1. pay a fine of $7,500; and
2. take the Law Society Trust Accounting course.

CRYSTAL IRENE BUCHAN

Victoria, BC

Called to the bar: May 15, 1992

Discipline hearing: April 24 and December 4, 2019

Panel: Jennifer Chow, QC, chair, John Lane and Bruce LeRose, QC

Decisions issued: May 22, 2019 (2019 LSBC 18) and February 13, 2020 (2020 LSBC 07)

Counsel: Tara McPhail for the Law Society; Peter Firestone for Crystal Irene Buchan

FACTS

In November 2016 Crystal Irene Buchan was retained to represent a client who had divorced her spouse in 1992 by order of the Superior Court of Québec. Significant arrears in spousal support were outstanding. The parties reached a settlement of all outstanding issues, including an agreement to execute a consent order to vary the Quebec divorce order. Opposing counsel sent Buchan draft settlement documents, including a draft consent order, a mutual spousal support release and a final release of all claims. Opposing counsel also sent Buchan his client's personal cheque for $110,000, on Buchan's undertaking not to release or deposit the money until Buchan's client had executed the releases and Buchan had approved the consent order and returned the settlement documents.

Buchan accepted the undertaking and indicated that her client agreed to the settlement documents, on the condition that her client's former spouse agree to four specific changes. Opposing counsel provided Buchan with revised settlement documents reflecting the requested changes.

Buchan's client's Quebec counsel then requested the addition of a tax indemnity provision. Buchan forwarded the request to opposing counsel, who responded that the parties had already entered a binding agreement.

Buchan's client did not execute the settlement documents, and

Buchan did not approve or sign the consent order. After Buchan did not reply to several communications from opposing counsel, opposing counsel sought and received an order from the BC Supreme Court that the parties had entered a binding and enforceable agreement. Opposing counsel sent the draft order to Buchan for her approval and return. Buchan did not reply, nor did she reply to several subsequent communications.

A BC Supreme Court registrar determined that the order confirming a binding agreement was appropriately drafted and granted costs in favour of opposing counsel's client.

Buchan still did not approve and sign the consent order. Opposing counsel sent Buchan a proposal that would allow her to deposit his client's $110,000 cheque. Buchan was to forward to the opposing counsel a cheque in the amount of costs ordered by the court to opposing counsel and, when they were available, the settlement documents executed by Buchan's client.

Buchan deposited $110,000 into trust, provided opposing counsel with a cheque in the amount of the ordered costs and asked opposing counsel if she could release the remainder of the settlement funds to her client. Opposing counsel responded that his client insisted that the settlement documents be signed and returned and the settlement order be approved and returned. Despite multiple requests, Buchan still did not deliver executed settlement documents to opposing counsel.

Opposing counsel complained to the Law Society. In December 2017 Buchan provided opposing counsel with executed settlement documents, including the consent order, and released the settlement funds to her client.

DETERMINATION

The panel found that Buchan committed professional misconduct by failing to sign an appropriately drafted consent order promptly, failing to sign an appropriately drafted court order promptly and failing to answer with reasonable promptness some or all of the communications from opposing counsel.

DISCIPLINARY ACTION

In determining the appropriate disciplinary action, the panel considered the serious nature of Buchan's misconduct. As a result of her delay and non-responsiveness, the parties could not resolve the matter for over a year and had to attend court again, causing unnecessary burden on judicial resources.

The panel also considered her 25 years of practice and her professional conduct record. She had multiple conduct reviews and a citation over a period of 10 years and has displayed a pattern of delay and non-responsiveness and failure to respond to remedial and disciplinary attempts.

Buchan explained that her current predicament was not an extension of a pattern of delay or failures to respond. She said her inaction was because she was defending her client vigorously by not signing the court orders. The panel disagreed that vigorous representation of a client precluded her from signing the court orders or responding to communications. In the panel's view, an effective and efficient justice system and the protection of the public require lawyers to diligently sign and enter court orders.

The panel considered the range of sanctions in similar cases and the effect of a suspension on her firm and clients. The panel placed little weight on letters of reference from her spouse and colleagues.

The panel ordered that Buchan:

1. be suspended from the practice of law for 45 days;
2. be referred to the Practice Standards Committee and remain under its jurisdiction until released by that committee; and
3. pay costs of $6,347.05.

SEANNA MICHELLE MCKINLEY

Kamloops, BC
Called to the bar: May 25, 2001
Administrative suspension: April 11, 2016
Ceased membership for non-payment of fees: January 1, 2017
Discipline hearing: April 3 and October 8, 2019
Panel: Jamie Maclaren, QC, chair, Anita Dalakoti and John D. Waddell, QC
Decisions issued: June 12, 2019 (2019 LSBC 20) and February 14, 2020 (2020 LSBC 08)
Counsel: Alison Kirby and Ilana Teicher for the Law Society; no one appearing on behalf of Seanna Michelle McKinley

APPLICATIONS FOR SUBSTITUTED SERVICE

A citation against Seanna Michelle McKinley was authorized on January 25, 2018 and issued on February 2, 2018. Law Society rules required that it be served on McKinley by March 19, 2018. McKinley informed the Law Society that she would not cooperate by advising of a place to serve documents on her or make herself available for personal service. The Law Society was unsuccessful in serving McKinley and sought and received an order for substituted service on March 13, 2018 (2018 LSBC 11).

Despite the order for substituted service, the Law Society, due to a miscalculation of the dates involved, failed to serve the initial citation within the time permitted. The citation was re-authorized on October 18, 2018 and re-issued on October 30, 2018. The Law Society applied for another order for substituted service on the same grounds on which such an order was previously granted.

The Bencher found that the evidence continues to support the conclusion that McKinley is willingly not making herself available to receive service, despite being informed that the Law Society has been attempting personal service.

The Bencher granted the Law Society's application for a second order for substituted service by:

- posting the notice to McKinley's member portal on the Law Society's website;
- sending a letter by ordinary mail to McKinley, care of a temporary working address she had at one time provided to the Law Society; and
- sending a letter by ordinary mail to her last known business address (2018 LSBC 35).

FACTS

McKinley was retained to represent a client in both a family matter involving the client's separation from her husband and an estate matter in which the client was executor and both the client and the client's husband claimed an interest. The client gave McKinley two cheques drawn from the estate, each in the amount of $49,000. McKinley deposited one of the cheques into her own trust account and the other into her firm's trust account.

McKinley withdrew all of the $49,000 from her own trust account knowing that she had no entitlement to the funds and that the funds were subject to a non-disposition order, which was in breach of undertakings to transfer and hold the funds in an interest-bearing account. She falsely represented to opposing counsel and her client's new counsel that she was continuing to hold the funds in an interest-bearing account and attempted to mislead the Law Society about her handling of the funds.

Further, McKinley misappropriated $334,593.77 by making withdrawals from her pooled trust account when her accounts were not current and/or she had not rendered a bill for the services. She used the funds to cover her operating and personal expenses. She later fabricated invoices and electronic fund transfer forms to hide her misconduct.

McKinley attempted to mislead the Law Society during the course of its investigation by creating or causing to be created 528 backdated bills, 447 backdated cover letters and 480 backdated electronic transfer forms and by falsely telling the Law Society that she did not operate her own trust account or have a separate accounting system and that she always billed prior to making withdrawals from trust.

McKinley failed to comply with trust accounting rules by improperly withdrawing funds from trust, failing to properly maintain client trust ledgers, failing to record withdrawals from trust, failing to perform monthly trust reconciliations and failing to disclose the existence of her own trust account on annual trust reports.

DETERMINATION

The hearing panel found that McKinley committed professional misconduct by intentionally misappropriating client funds, facilitating the breach of a court order, breaching undertakings, making misrepresentations to other lawyers, attempting to mislead the Law Society, attempting to mislead the Law Society and/or improperly obstructing an audit and failing to comply with her accounting obligations.

DISCIPLINARY ACTION

The panel considered the Law Society's submission that the appropriate disciplinary action was disbarment. It reviewed previous discipline decisions, including *McGuire v. Law Society of BC*, 2007 BCCA 442, where the Court of Appeal confirmed that disbarment is the only remedy for deliberate misappropriation of trust funds, except in highly unusual circumstances.

McKinley's misappropriation of client trust funds was plainly intentional. She made 41 improper client trust account withdrawals totalling $49,000 and another 528 improper pooled trust account withdrawals totalling $334,593.77 over the course of a few years. Her behaviour was prolonged and reckless and is an example of the most severe type of professional misconduct. If not met with the Law Society's strongest message of condemnation and deterrence, it has the potential to do irreparable harm to public confidence in the integrity of the legal profession.

The panel also considered McKinley's actions in facilitating the breach of a court order, misleading the Law Society, breaching undertakings, making misrepresentations to opposing counsel and failing to comply with trust accounting rules. Though not as serious as misappropriation, these discipline violations still constitute serious misconduct in and of themselves.

McKinley failed to participate in the disciplinary process, causing the Law Society to incur significant time and expense. There is no evidence to indicate that her misconduct was an aberration and unlikely to recur.

The panel ordered that McKinley:

1. be disbarred; and
2. pay $12,743.12 in costs and disbursements.

DANIEL KAY LO

Vancouver, BC

Called to the bar: May 17, 2005

Panel: Jeffrey T. Campbell, QC, chair, Clarence Bolt and Gavin Hume, QC

Decision issued: February 18, 2020 (2020 LSBC 09)

Counsel: Kathleen Bradley for the Law Society; Daniel Kay Lo appearing on his own behalf

FACTS

Daniel Kay Lo practised with notaries public at TNG Legal Services MDP and was the only lawyer at the firm. In February 2018, a Law Society compliance audit of TNG revealed a breach of the client verification rules and a longstanding failure to remit GST, PST and payroll source deductions, which led to the discovery of misleading statements in Lo's trust reports.

The Canada Revenue Agency examined TNG's payroll in October 2017 and found that it had not remitted payroll source deductions from

January 1, 2015 to September 30, 2017. A further review determined that TNG owed a total of $175,669.29 with interest and penalties. Lo paid the debt to the CRA by October 2018. Although TNG did not remit payroll source deductions between 2015 and 2017, Lo's annual trust reports to the Law Society reported his firm had made payroll remittances in full and on time.

TNG also did not file any GST returns for the years 2013 to 2017. The CRA sent notices to Lo in 2016 stating that, because TNG had not filed tax returns, the CRA was estimating the amounts owed for 2013 to 2015. TNG continued to fail to file returns for the years 2016 and 2017, and again the CRA sent notices with an estimated assessment for unfiled GST returns. Lo paid the arrears in 2018, which totalled approximately $33,000. TNG is reportedly now filing GST returns on time as required.

TNG was required to file PST returns with the BC Ministry of Finance on a quarterly basis. TNG did not file PST returns or filed late returns between 2015 and 2018. The Ministry of Finance conducted a number of audits in 2018. TNG paid PST arrears in 2018, which totalled approximately $54,000. TNG is now filing PST returns on time.

In 2017, Lo represented a client, who lived in another country, in the sale of her residential property. He did not know her personally and had not met her before. The documents were apparently signed by the client and included a certificate verifying the client's identity, which appeared to have been completed by a notary public in the client's jurisdiction. The documents were forwarded to Lo by the client's husband, rather than being sent directly from the notary. The documents did not include any copies of identification and Lo did not follow up with the notary public to obtain copies. Lo failed to take required steps to confirm his client's identity, despite having no face-to-face contact with her.

ADMISSION AND DETERMINATION

The panel accepted Lo's admission that his conduct constituted professional misconduct.

DISCIPLINARY ACTION

Lo and Law Society counsel jointly submitted that the disciplinary action should be a $15,000 fine. The hearing was conducted in writing instead of an oral hearing.

The panel considered the nature and gravity of the conduct and that Lo has admitted to the misconduct and agreed to the penalty. He has paid all debts to various government agencies, made changes to his practice to ensure the firm's financial obligations are met in the future and admitted to the misconduct.

The panel accepted the proposed disciplinary action and ordered that Lo pay:

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

JAMES LESLIE STRAITH

Nanaimo, BC

Called to the bar: August 1, 1985

Panel: Jennifer Chow, QC (Chair), Bruce LeRose, QC and Lance Ollenberger

Decision issued: February 18, 2020 (2020 LSBC 11)

Counsel: Jaia Rai for the Law Society; James Leslie Straith appearing on his own behalf

FACTS

The matter arises from James Leslie Straith's representation of a group of individuals ("Lost Canadians") who believe they have been unfairly excluded from Canadian citizenship. The citation included a range of allegations, such as failing to identify the proper client, acting while in a conflict of interest, failing to follow proper billing and trust accounting rules and failing to keep proper records.

Straith was introduced to the leader of "Lost Canadians," who had been involved in political action and lobbying efforts on behalf of the group. Straith accepted a $10,000 retainer to provide legal services to the group, particularly to file judicial review cases against the federal government.

Only one judicial review was filed on behalf of one of the members of the group during Straith's retainer. The group member terminated Straith's retainer before the member's judicial review case was resolved. Straith had no discussions with the group's leader or the group member to ensure the parties knew who the client was, who was authorized to instruct him or what would happen if he received conflicting instructions from them. While the group leader was the primary contact, the group member was the one and only applicant in the judicial review proceeding filed.

The group member and the group leader had conflicting interests – the group member wanted her Canadian citizenship while the group leader sought a precedent that would benefit the larger Lost Canadians group. Straith failed to address that conflict. The group member was seeking to obtain citizenship by way of relief under section 5(4) of the *Citizenship Act*, which was rejected. Straith did not advise her of the implications of him acting on her behalf while also taking instructions to benefit the group at large. He failed to appreciate that both the group leader and the group member were entitled to undivided loyalty from their lawyer.

The group member's judicial review application proceeded to a hearing. The judge indicated that the court may be favourably inclined to grant judgment in favour of the group member, but she might want to consider whether to adjourn the matter and convert the proceeding to an action for the entire group. The group member agreed to the adjournment, although she knew that she could obtain judgment in her favour that day, because she wanted to do what was in the best interests of the entire group. The judge made an order directing an adjournment to allow Straith to prepare and launch a broader proceeding.

After the hearing, additional work on the judicial review continued to convert it to an action to benefit the larger group. Straith did not advise the group leader and the group member to obtain independent legal advice before continuing to represent both of them. The group member decided to change counsel and terminated the retainer. Straith had no further communications with her but continued to communicate with the group leader. He did not file a notice of change of lawyer with the court and remained as counsel of record for a time. Rather than advise the court he was no longer acting for the group member, he sought instructions from the group leader in regard to the member's judicial review case.

Straith received a letter from the group member's new lawyer asking for her file. Straith discussed this with the group leader in emails, claiming that his previous work for her was the intellectual property of the group. He advised the group leader to send the new lawyer an email telling him that he did not represent the leader or the group. His advice conflicted with the group member's interests in her judicial review case and was inconsistent with his representation of her as his client.

After Straith stopped acting as counsel for the group member, he emailed a draft bill to the group leader. They disagreed as to whether they reached an agreement to settle the amount. Straith admits that he knew the group leader was disputing the draft bill. The bill was never signed nor recorded in his accounting records. Prior to this, four statements of account were addressed to "Lost Canadians," but the group leader never received them.

Over the course of his retainer, Straith breached trust accounting rules. He did not properly account for additional funds received from the group leader and donations received from various supporters. He did not keep time records, daily time entries, signed copies of the 2012 accounts, with one exception, or hard copies of receipts for funds received from supporters of the group. Some receipts were available on his accounting program, but they were not sent to the group leader or donors as required.

Straith deposited payments from the group leader into his general account rather than into his trust account. The funds should have been treated as trust funds at the time of receipt because no outstanding accounts existed. On eight occasions, he withdrew money from trust when he did not first deliver a bill to the client. Straith failed to notify the group leader about all the funds he received in trust, as well as 15 separate contributions totalling $16,454.56 to legal costs.

The total amount of funds received by Straith from the group leader, group member and other supporters of the group was $32,454.56. The total amount of bills issued by Straith was $24,412.77. The difference between the amount he received and the amount he billed was $8,041.79 in overpayment.

The accounting provided to the group leader contained various errors and omissions. Straith did not disclose to the group leader the errors he discovered and the adjustments he made to his trust accounting records. He never accounted to him for the $8,041.79 difference between the total funds received and the total bills issued.

Straith commenced a civil action against the group leader to collect on a bill that was never finalized, signed and delivered. The calculation of the amount that Straith claimed to be due did not credit the group leader with amounts he should have known were received by him in trust.

ADMISSION AND DETERMINATION

The panel accepted Straith's admission that his conduct constituted professional misconduct.

DISCIPLINARY ACTION

Straith and Law Society counsel jointly submitted that the disciplinary action should be a two-month suspension and payment of costs.

The panel considered the serious nature and gravity of the misconduct and the need for general deterrence. The panel agreed with the proposed sanction and ordered that Straith:

1. be suspended for two months; and
2. pay costs of $22,523.79.

AMARJIT SINGH DHINDSA

Abbotsford, BC

Called to the bar: June 8, 2001

Discipline hearing: November 14, 15 and 16, 2018, January 22, 2019 and January 8, 2020

Panel: Michelle D. Stanford, QC, chair, Brendan Matthews and Herman Van Ommen, QC

Decision issued: March 25, 2019 (2019 LSBC 11) and March 3, 2020 (2020 LSBC 13)

Counsel: Alison Kirby and Ilana Teicher for the Law Society; Duncan Magnus for Amarjit Singh Dhindsa

FACTS

Two of Amarjit Singh Dhindsa's former assistants testified that, shortly after being hired, they were given Dhindsa's Juricert password and the password to his computer, that Dhindsa permitted them to to affix his electronic signature to documents filed with the Land Title Office and that they did so routinely. Both claimed that Dhindsa did not sign documents via remote log-in and did not have GP, the other lawyer in the office, affix his Juricert signature to documents on Dhindsa's behalf.

Dhindsa testified that he had never given his Juricert password to anyone and that he was not aware that any of his staff had ever used his Juricert password to sign documents digitally. He said that, if his signature was required when he was not in the office, he either logged in remotely to affix his Juricert signature to the documents himself or he had GP sign on his behalf.

GP testified that he had no arrangement with Dhindsa to digitally

sign documents on Dhindsa's behalf, that he did not recall ever doing so and that, if he did, it was on rare occasions.

An individual who provided technology services to the firm said that Dhindsa rarely logged in remotely and, when he did, it was mostly to check his calendar.

Dhindsa's current assistant testified that she regularly logs in to affix his Juricert signature from remote locations, that she was not aware of anyone other than Dhindsa having his Juricert password and that she had heard the two former assistants ask GP to sign documents on Dhindsa's behalf.

The panel found that GP, the technology service provider and Dhindsa's two former assistants were credible. It found that Dhindsa's current assistant gave her evidence in an emotional and highly partisan manner.

DETERMINATION

The panel determined that the Law Society proved the allegation on a balance of probabilities and that Dhindsa committed professional misconduct.

DISCIPLINARY ACTION

The panel noted that several Law Society publications pointed out that it was an offence to disclose one's Juricert password and that, as gatekeepers of the land title electronic registration system, lawyers must use that authority ethically and responsibly. While this offence is generally dealt with by way of a conduct review, in this case Dhindsa did not admit to sharing his password, and the wrongful conduct occurred frequently and over a long period of time.

Dhindsa had a significant professional conduct record, which included several conduct reviews, a practice standards review and two previous findings of professional misconduct. He had applied for a review of the second finding of professional misconduct.

The panel felt a significant suspension was required because the wrongdoing occurred so often over such a long period of time. The disciplinary action must contain a significant element of specific deterrence because of Dhindsa's professional conduct record and because the panel has no confidence that he will change his behaviour unless he experiences a significant suspension.

The panel ordered that Dhindsa:

1. be suspended for four months; and
2. pay costs of $16,436.83.

ANDREW JAMES LIGGETT

New Westminster, BC

Called to the bar: May 17, 1991

Discipline hearing: November 27, 2019

Panel: Ralston S. Alexander, QC, chair, Jacqueline McQueen and Mark Rushton

Decision issued: March 3, 2020 (2020 LSBC 12)

Counsel: Sarah Conroy for the Law Society; Kieron Grady for Andrew James Liggett

FACTS

In 2016, the Law Society conducted a compliance audit of Andrew James Liggett's practice, which revealed 10 of 35 audited areas as being out of compliance. Despite clear direction from the Law Society, Liggett failed to make the required changes to his record keeping.

A further investigation revealed that, as well as his compliance issues with the trust and general accounting rules, Liggett had, to a significant extent, financed his practice with money belonging to Canada in the form of unremitted GST and employee payroll source deductions. At various times during January 2016 to September 2018, Liggett was indebted to Canada for unremitted GST of amounts up to $10,000. From February 2016 to February 2019, he was indebted to Canada on account of unremitted payroll source deductions of various amounts, at one point owing $139,600.

ADMISSION AND DETERMINATION

The panel found that the problems encountered by Liggett began with two primary factors. First, Liggett did not have the necessary bookkeeping skill to operate his practice in a compliant manner, and attempts to resolve this deficiency with professional help were met with only intermittent success. Second, Liggett's admirable focus on legal aid work rendered his practice largely uneconomic.

Liggett's conduct was a marked departure from the conduct that the Law Society expects of lawyers. Liggett admitted, and the panel agreed, that his behaviour constituted professional misconduct.

DISCIPLINARY ACTION

The panel considered the gravity of the misconduct and Liggett's professional conduct record. He had two previous findings of professional misconduct, a series of supervision engagements with the Practice Standards Committee and an administrative suspension, most of which dealt with circumstances that were substantially similar to this case.

Liggett acknowledged responsibility for the misconduct and cooperated throughout the disciplinary process.

The panel considered the proposed disciplinary action to be within the appropriate range of disciplinary action, albeit at the lower end of that range. The panel accepted the proposed action and ordered that Liggett:

1. be suspended from the practice of law for one month;
2. not operate a trust account in his practice except in accordance with the terms of a Trust Supervision Agreement approved by the Law Society; and
3. pay costs, including disbursements, of $2,305.98.❖

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