

The Law Society
of British Columbia



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BENCHERS' BULLETIN

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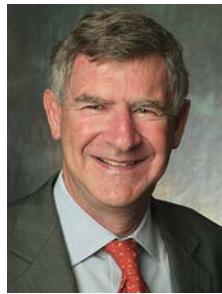
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New developments in legal education and accreditation

by John J.L. Hunter, QC

BENCHERS' BULLETIN

The *Benchers' Bulletin* and related newsletters are published by the Law Society of British Columbia to update BC lawyers and articled students 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.

The views of the profession on improvements to the *Bulletin* are always welcome — please contact the editor at communications@lsbc.org. Additional subscriptions to Law Society newsletters may be ordered at a cost of \$50.00 (plus GST) per year by contacting the subscriptions assistant at communications@lsbc.org. To review current and archived issues of the *Bulletin* online, see "Publications & Forms/Newsletters" at lawsociety.bc.ca.

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ONE OF THE pleasant responsibilities of the President of our Law Society is to welcome new lawyers to the British Columbia Bar. I had the pleasure of doing so most recently on September 26.

The call ceremony is a tangible reminder that one of the primary responsibilities of any law society in Canada is the accreditation of new lawyers. This is a significant responsibility because of the heavy reliance the public places on the competence, skills and ethics of the legal profession.

As all of us are aware, the accreditation of lawyers in Canada involves three elements — graduation from an approved law school, successful completion of a bar admission program and a period of articles to a member of the Bar. Unlike jurisdictions such as Australia and England and Wales, Canada has never had a national standard for law school programs. We have 16 common law schools that follow similar programs, particularly in first year, but most law societies (including ours) have never attempted to articulate what competencies they expect graduates of a Canadian law school to possess.

The exception is Ontario, which in 1957 set out a required list of courses and course offerings. The list was revised in 1969 but has not been reviewed since. By contrast, in the intervening years similar jurisdictions — such as Australia, England and Wales, and New Zealand — have set out a list of courses graduates must have taken for admission to their Bars. In the United States, the American Bar Association has for many years had a detailed accreditation process for law schools.

In the past couple of years, a number of events have converged to invite a reconsideration of our accreditation process, particularly the absence of any articulated

standard by which the law societies accept law degrees as meeting the academic requirement for the practice of law.

In the past couple of years, a number of events have converged to invite a reconsideration of our accreditation process.

The first of these is the growing number of candidates for admission to our Bar who have been trained outside Canada. This includes lawyers who have practised in countries with very different legal systems than ours, lawyers who have practised in similar common law jurisdictions, and candidates who have not practised at all but have degrees from law schools in common law jurisdictions such as England, Australia and India. Several years ago the Federation of Law Societies established a National Committee of Accreditation to assess the qualifications of such foreign-trained applicants, but that committee is under increasing strain as the number of applicants increases each year and the standard against which their education is to be measured remains unarticulated.

In addition, several universities in Ontario have indicated an interest in setting up law schools and have asked the NCA what standards they would have to meet for their degrees to be recognized in Ontario and by extension through our National Mobility Agreement, throughout the common law provinces of Canada. Although the Ontario Government has recently indicated that they would not fund new law schools at the present time, the fact that the law societies of Canada are unable to advise a university of the standards that must be met for acceptance of their degree seems unsatisfactory.

To underline the unsatisfactory nature of our lack of articulated standards, several provinces in Canada have recently adopted legislation concerning fair access to the professions that requires that the professional accreditation process be demonstrably transparent, fair, objective and impartial. Whether or not such legislation would apply to the legal profession in these provinces, it is difficult to see how accreditation processes that did not meet these benign requirements could be defended.

At the same time, several important studies have been released in the past 15 months calling for greater integration of the theoretical and the practical in law school programs, as well as greater emphasis on professional responsibility instruction.

The most influential of these is likely to be the report of the Carnegie Foundation for the Advancement of Teaching entitled *Educating Lawyers: Preparation for the Practice of Law*.

As recently as three months ago, a committee of the ABA's Section on Legal Education and Admission to the Bar recommended reconsideration of the ABA accreditation process to address the recommendations of the Carnegie report.

The Federation of Law Societies of Canada has responded to these challenges by establishing a Task Force to review the standards for approval of the law school degree. I am chairing the Task Force, which includes representatives from 8 of the 10 provincial law societies.

The Task Force has just released a Consultation Paper and is inviting comment from the profession, from the legal academy and from any interested observer on a series of questions related to the standards that graduates of law schools ought reasonably to be expected to meet when they present themselves to our law societies for enrolment in our bar admission programs. The intent is not to be overly prescriptive, but to work collaboratively with law schools to ensure that we all do our part to ensure, to the greatest extent possible, that lawyers we accredit have the requisite knowledge, skill and ethical standards to meet the needs of the public who require our services.

The Consultation Paper is available for review on the Federation website (flsc.ca) and also on the Law Society website (law-society.bc.ca). I would encourage all of you who have an interest in this important enterprise to take a few moments to review it and provide us with your views. We are hoping to gather comments until mid-December and then to produce a final report by next spring for presentation to the Federation Council.

This is not a project that has been undertaken before. We need your assistance in getting it right. I hope that British Columbia lawyers will take an interest in helping us achieve the best accreditation model we can devise for the benefit of the public we serve. ♦



Photo by Brian Denphy Photography.



Why CanLII matters

by Timothy E. McGee

ACCESS TO INFORMATION about the law is a cornerstone of civil society. For most of the last century, access to legal information meant visiting a law library, whether public or private. By the end of the 1990s, an increasing volume of legislation and a significant number of court decisions had become freely available via the Internet. However, navigating among the different websites and portals was haphazard at best, and for-profit providers were increasingly acquiring the rights to distribute such information.

In February 2000, the Federation of Law Societies' National Technology Com-

mittee proposed creating a virtual library of Canadian law. Based on a model successfully implemented in other common law jurisdictions, an initial website demonstrated the advantages of publishing legal information in an integrated manner. In 2001, the Federation created the Canadian Legal Information Institute, a not-for-profit organization to manage this website and ensure that it would become a long-term, reliable resource.

Today, CanLII has become a significant source for primary material — both legislative and judicial — for the legal profession.

Later in this edition of the *Benchers' Bulletin*, Catherine Best writes about a recent CanLII survey and how CanLII can assist you with your legal research.

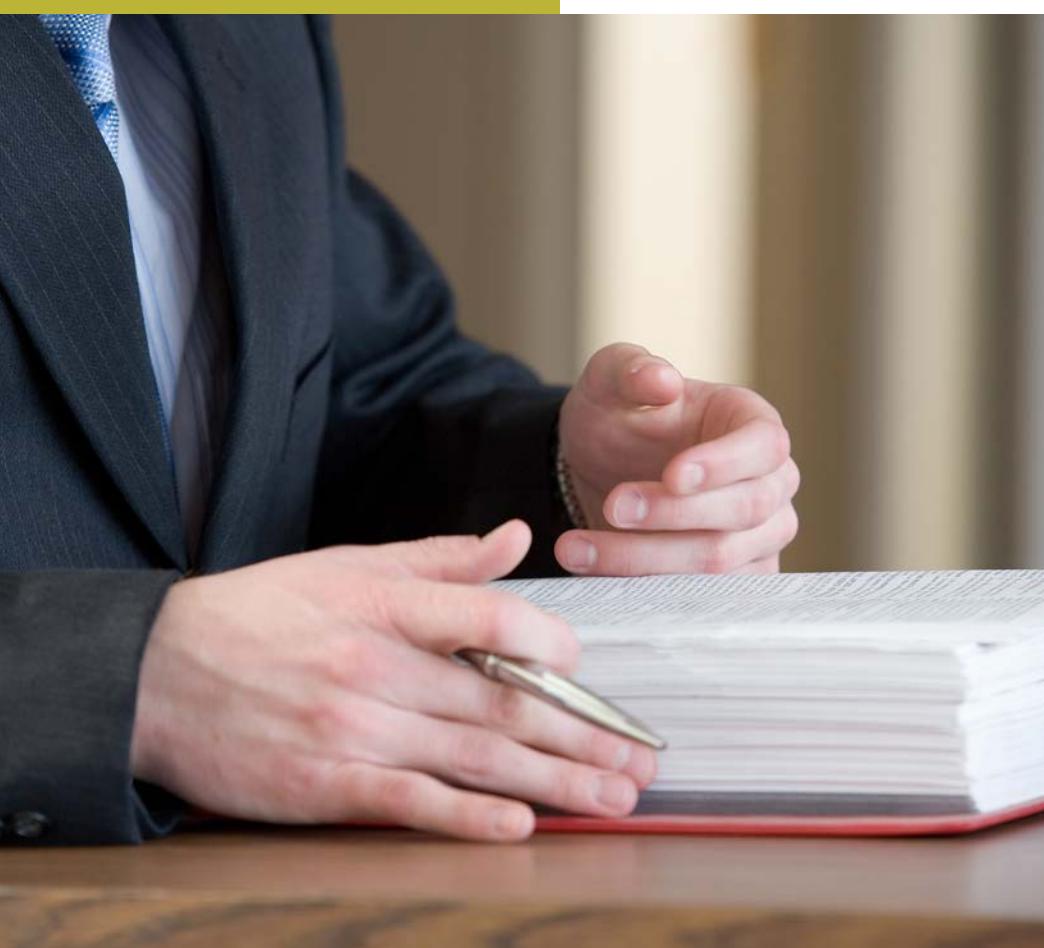
CanLII has become a significant source for primary material — both legislative and judicial — for the legal profession.

But CanLII is more than just a resource for lawyers. A recent focus group session found that members of the public looking for legal assistance frequently turn to the Internet to find information about their particular legal problems. CanLII provides a simple and efficient means for everyone to gain access to case law and legislation.

By making many legal resources freely and easily available over the Internet, CanLII provides some balance to the cost of access through for-profit providers.

CanLII's provision of free access to a wide variety of legal resources also serves to counteract the increasing commercialization of legal information. Over the last decade, the cost to law libraries of acquiring legal information, both print and electronic, has climbed significantly. This trend is not expected to change in the future. By making many legal resources freely and easily available over the Internet, CanLII provides some balance to the cost of access through for-profit providers.

For the significant number of you already using CanLII, the benefits are already known. For those of you who haven't yet made use of CanLII, I would encourage you to visit their website (canlii.org) and discover for yourself why CanLII matters.❖



Hume acclaimed Second Vice-President

LAWYERS ATTENDING the Law Society's Annual General Meeting on September 23 acclaimed Gavin H.G. Hume, QC as Second Vice-President for 2009. Hume will become First Vice-President in 2010 and President in 2011.

Hume graduated from Delbrook High School in North Vancouver and went on to the University of British Columbia, where he earned his BA in 1964 and his LLB in 1967. He was called to the BC Bar in 1968 and appointed Queen's Counsel in 1992.

Throughout his career, Hume has been a member of Fasken Martineau DuMoulin LLP (formerly Russell & DuMoulin). As a senior member of the Labour, Employment

and Human Rights Group, Gavin is known as a leading practitioner in employment and labour law. He has served as an executive member and Provincial Chair of the Labour Law Section, BC Branch of the Canadian Bar Association, and as an executive member and Chair of the National Labour Law Section of the Canadian Bar Association.

Hume is Past-President and Honorary Life Member of the Human Resources Management Association of BC and is a founding member and current President of the Canadian Association of Counsel to Employers.

A Bencher of the Law Society since 2004, Hume is Chair of the Ethics Commit-

tee and serves on the Executive Committee and the Retention of Women in Law Task Force. He has served as Chair of the Regulatory Policy Committee and the Women in the Legal Profession Task Force, and as a member of the Audit and Discipline Committees and the Ombudsperson Task Force.

Hume is a Director of the YMCA of Greater Vancouver, a past Trustee and Chair of the YMCA Endowment Fund. An Honourary Lifetime Member of the YMCA, he has served two terms as Board Chair for the YMCA of Greater Vancouver, and as Honourary Solicitor since 1985. In 2003 he received the Canadian Bar Association's Community Service Award (BC Branch).◆



Photo by Brian Denny Photography

Gavin H.G. Hume, QC, Second Vice-President for 2009 (left) and President John J.L. Hunter, QC.

2009 fees due November 30

THE LAW SOCIETY annual practice fee, the Special Compensation Fund assessment and the first half of the Lawyers Insurance Fund assessment are due November 30, 2008 for the 2009 practice year.

Practice fee: The members set the practice fee for 2009 at the annual general meeting of the Law Society on September 23. The fee and its related components total \$1,633.50.

Special Compensation Fund fee: The 2009 Special Compensation Fund assessment is \$150, a reduction of \$200 from 2008.

Lawyers Insurance Fund fee: The 2009 Lawyers Insurance Fund assessment is \$1,400, the same as in 2007 and 2008.

Late payment will incur an additional fee of \$100 for practising members and \$25 for non-practising members, plus applicable taxes. As November 30 falls on a Sunday, payments received from members on Monday, December 1 will not be subject to late payment fees.◆



Photo by Rafal Andronowski Photography

Pro bono a “critical investment” — Arbour

PRO BONO WORK is a critical investment and an essential part of the fight to protect human rights, said Louise Arbour, a former Supreme Court Justice who until recently served as the United Nations High Commissioner on Human Rights.

Arbour was a keynote speaker at *Spanning the Nation*, a national conference organized by Pro Bono Law of BC in Vancouver in September.

Speaking candidly about her experience as High Commissioner from 2004 to 2008, Arbour surprised many in the audience by identifying herself as a pro bono client.

When Arbour was first appointed, she steered the office sharply toward human rights advocacy, including direct involvement in court cases.

“There are two facets of human rights work: promotion, which provides technical assistance and support, and protection, where you go to court to advance human rights,” explained Arbour. “I believe it is an absolute necessity to advance human rights in courts.”

As the Commissioner’s office had never done this kind of work before, it was an important test of standing — recognition in national and international courts was not guaranteed. And the Commission’s new direction also had financial implications — they did not have a budget for the kind of legal work in which Arbour wanted to engage.

“I believe it is an absolute necessity to advance human rights in courts.”

She turned to pro bono lawyers to get the job done.

“Why would lawyers choose to do pro bono work for the UN High Commissioner on Human Rights when they could be helping impoverished and marginalized people?” Arbour asked. “I like to think that it was worth it. We learned from each other. We learned from the experience.”

Arbour spoke at length about the role pro bono lawyers played in a landmark U.S.

Supreme Court case, *Boumediene v. Bush*. The Commissioner’s office worked with several pro bono lawyers to file an amicus brief in support of the petitioners, arguing that detainees held at Guantanamo Bay were entitled to the same constitutional rights enjoyed by American citizens, including the right to challenge their detention in a civilian court.

On June 12, 2008 — 18 days before Arbour’s term expired — the court delivered its ruling, essentially agreeing with the Commission’s position.

As to why the UN High Commissioner’s office got involved in this case and not others, Arbour simply said, “if you have to wait for the perfect blueprint for action on human rights you will wait forever.

“Intervention raises the standards of advocacy and makes a difference for real people and their relationship to the law.”

With her term as High Commissioner complete, Arbour plans to take a bit of a break — enjoying some time at home before embarking on her next project. ♦

Consider volunteering for a pro bono program

PRO BONO WORK can be a gratifying experience for lawyers as well as a valuable marketing and recruiting strategy for law firms. Consider volunteering your time for any of the following pro bono programs:

Pro Bono Law of BC

Roster programs include Court of Appeal Program, Family Law Program, Federal Court of Appeal Program, and Judicial Review Program. Contact Jamie Maclaren, Executive Director at 604-893-8932.

Salvation Army BC Pro Bono Program

This program offers free summary advice to clients in criminal, family, immigration, labour and civil law, as well as pro bono on criminal, civil and family appeals to the BC Court of Appeal. Contact John Pavey, Central Coordinator at 604-681-3405.

Multiple Sclerosis Society of Canada, BC Division, Volunteer Legal Advocacy Program

This program meets the advocacy needs in the areas of human rights, employment equity, insurance, income security, estate planning and family law. Contact Ulrike Kleeman, Coordinator at 604-689-3144.

The Alliance for Arts and Culture — Artists Legal Outreach

This pilot program provides artists in all disciplines with access to summary advice from volunteer lawyers experienced in legal issues faced by artists. Contact Martha Rans, Coordinator at 604-681-3535.

Western Canada Society to Access Justice

This society offers free summary advice to help clients prepare to represent themselves in court on legal issues such as criminal, family and other areas of law. Contact Allan Parker, Executive Director at 604-482-3195.

For more information, please visit probononet.bc.ca.

New Security Services Act



MEMBERS ARE ADVISED that the *Security Services Act* came into force on September 1, 2008. This Act requires all private investigators to obtain a security worker licence from the Registrar of Security Services. Lawyers who retain or employ investigators in connection with client file matters will need to ensure that all investigators are licensed in accordance with the Act.

In consultation with the government prior to the introduction of the Act, the Law Society identified the need to ensure that privileged client information collected by an investigator employed or retained by a lawyer or law firm could not be disclosed to the Registrar of Security Services in the course of the Registrar's official duties.

With this in mind, the Law Society and the Registrar have agreed upon a protocol that will provide for the protection of privileged client information in the event the Registrar makes a demand for the production of information from the files of a lawyer or an investigator retained or employed by a lawyer in connection with a client matter. The protocol is available for viewing on the Law Society's website at www.lawsociety.bc.ca.

For more information about the new legislation and for access to licensing forms, visit the Ministry of Public Safety and Solicitor General online at pssg.gov.bc.ca/securityindustry. ♦



New online program tracks Continuing Professional Development

The Law Society of BC's Continuing Professional Development program is set to begin on January 1, 2009. Throughout 2008, the Benchers' Bulletin is running a series of articles to assist lawyers with meeting their CPD requirements. This is the third article in the series.

ON JANUARY 1, 2009, the Law Society will launch its new Continuing Professional Development program. To assist members in meeting the program's requirements, the Law Society has developed an innovative online resource to track individual CPD progress.

When the Continuing Professional Development program begins, members will be able to easily record and report their professional development online. The Law Society's automated system will send indi-

vidual progress reports to members, showing the hours of professional development completed and the requirement to be fulfilled to the end of the year.

Lawyers will also have online access to a current listing of approved courses and educational activities. These course offerings will continually be expanded by the society, in partnership with education providers and through input from lawyers. Lawyers are invited to submit requests for approval of courses and educational activi-

ties not already listed for CPD.

Many non-traditional educational programs have been approved to complement conventional, classroom-based courses. This will facilitate a customized type of learning that is most beneficial to lawyers and their practices. Some approved educational activities include teaching a law-related course, attending Canadian Bar Association section meetings or education-related activities, participating in a study group focused on law-related activities, and writing law books or articles relating to the study or practice of law.

All practising lawyers will be required to complete no fewer than 12 hours a year of continuing professional development in approved educational activities. Not less than two of the 12 hours must pertain to any combination of professional responsibility and ethics, client care and relations, and practice management.

The online continuing professional development tool and an enhanced list of frequently asked questions will be available to all members in November. For additional information, please contact Member Services at memberinfo@lsbc.org. ♦



The Law Society of British Columbia Members

Main Menu | Your CPD Info | Get Credit | Upcoming Courses | Log off

Law Society of BC Continuing Professional Development

John Doe's Continuing Professional Development Information as of Oct-07-2009

Credits Reported	CPD Credit Options
2009 CPD Information	<ul style="list-style-type: none"> Get Credit Request Credits <ul style="list-style-type: none"> Course Credit Request Group Study Credit Request Teaching Credit Request Writing Credit Request Upcoming Courses
Required Credits 12	
Credits Earned to Date 10	
Credits Required by: December 31, 2009 2	

You recorded the following for credits * :

- [Remove] Advanced Negotiation Strategies for Lawyers - Course (2.0 credits)
- [Remove] Intellectual Property for Solicitors - Live Course - Course (8.0 credits)

2009 Credit Request (1) - Credits Pending

You requested the following for credits * :

- [Remove] Advanced Civil Mediation - Course Oct-06-2009 15:47 PM

* If you recorded your credits incorrectly, click the Remove button. You can only remove credits for the current year.

CPD FAQ

- FAQ

Credits Reported	
2009 CPD Information	
Required Credits 12	
Credits Earned to Date 10	
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New communications toolkit for members

THE LAW SOCIETY has created a toolkit to help members communicate more effectively with their clients and others they encounter in their practice.

Developed by the Complaints Reduction Staff Group, the communications toolkit is an online training module that uses real life examples to help lawyers refine their communication skills within the context of their professional responsibilities.

"Whether you're dealing with a client, another lawyer, or consulting with an expert, good communication is critical," said Neil Hain, Professional Conduct lawyer and project leader. "The Law Society developed this training module to ensure that members have the tools they need to communicate effectively with their clients and colleagues."

While the training module was originally designed to assist Law Society members

who are having communication problems, as identified by the Professional Conduct department, Hain stresses that all lawyers can benefit from the program.

"The Law Society developed this training module to ensure that members have the tools they need to communicate effectively with their clients and colleagues."

"We want to provide all members with the opportunity to deal proactively with the issue of communication — to enhance their already well-developed skills in this area and ensure they are meeting their professional responsibilities to the best of their ability. That's why we created an online delivery system for the program, to reach as many members as possible."

The online training module is also practical, Hain added. Not only is it a manageable length — the program can be completed in a single sitting — it includes links to sample letters and other resources that members can use immediately in their practice.

The course has been test-driven by lawyers from different fields and of varying levels of experience. "I am pleased to say that all of the testers reported back with favourable comments and noted that the course offers valuable tips to improve communication skills in a wide range of practice areas," said Hain.

The program will be available to all members by the end of October. For more information about the communications toolkit, contact Neil Hain, Staff Lawyer, Professional Conduct at 604-443-5320 or nhain@lsbc.org. ♦



Neil Hain, Staff Lawyer, test drives the Law Society's new communications toolkit.

Make CanLII your first stop for legal research

By Catherine Best, Director, Canadian Legal Information Institute



Catherine Best is a research lawyer at Boughton Law Corporation and member of the Board of Directors of the Canadian Legal Information Institute.

A RECENT SURVEY of the legal profession conducted by the Canadian Legal Information Institute showed that CanLII is now the most frequently used electronic legal resource by lawyers in Canada. Thirty nine per cent of lawyers use CanLII at least once a week for their legal research. In terms of user-friendliness, lawyers rated CanLII first among the national legal information services. Of those lawyers who use CanLII, almost half stated that they can accomplish 50 per cent or more of their legal research with CanLII. And 71 per cent reported that CanLII allows them to reduce their cost for legal information.

Here are the top 10 reasons to use CanLII:

1. CanLII publishes case law and legislation (except for BC legislation) from across Canada, as well as administrative tribunal decisions. RSS feeds are available for each court's decisions.
2. CanLII supports searches by name, case citation, and keywords.
3. The search engine allows you to simply type in a string of terms or to compose a more complex Boolean query. Word variations are automatically searched. Searches can be refined easily.
4. The Advanced Search and Database Search allow you to customize your search. For example, with a click of the mouse you can restrict your search to appellate level decisions, or to a customized combination of databases.
5. You can rank your search results by date or relevance, or by how often cases have been cited.
6. Search results are displayed with highlighted terms. You select which search terms you want to locate in the documents, taking you faster to the most relevant passages.
7. Cases are hyperlinked to other cases and legislation, and a note-up feature is included. Parallel citations are shown.
8. Cases can be printed in HTML, or in PDF exactly as they were published by the court.
9. CanLII's flexible interface allows you to browse for legislation, search within individual Acts, search an Act and its related regulations, or search all legislation. The ability to compare versions of legislation will soon be available on CanLII.
10. There is no subscription fee, no need to log in, and no password. CanLII is funded by a portion of your practice fee, but is available to everyone as part of the Law Society's commitment to public access to the law.

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CanLII

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Wireless [checkbox] arbitrator [checkbox] jurisdiction [checkbox] specific performance [checkbox]

Print: PDF Format
Date: 2007-12-21
Docket: S077401
URL: <http://www.canlii.org/en/bc/bcsc/doc/2007/2007bcsc1919/2007bcsc1919.html>
Noteup: Search for decisions citing this decision

Reflex Record (noteup and cited decisions)

CanLII provides a phenomenal value to the profession for an annual cost per lawyer of approximately \$30, and results in significant savings to your clients. You own it — make the most of it! For more information, visit canlii.org. ♦♦♦

FROM WALLY OPPAL, QC, ATTORNEY GENERAL OF BC

Justice access centre pilot project underway

THE MINISTRY OF ATTORNEY GENERAL and the Legal Services Society are partnering to establish justice access centres in Nanaimo and Vancouver as part of a pilot project that will give the public early and affordable solutions to civil and family justice issues.

The Nanaimo project is scheduled to open its doors in October and will be an expansion of the Nanaimo Family Justice Services Centre that opened in April 2007. The Vancouver justice access centre will open in 2009.

The BC Family Justice Reform Working Group and the B.C. Civil Justice Reform Working Group both recommended that information and service "centres" be established. They recognized that co-ordinating existing services makes it easier for people to use the justice system and that providing information and services early is the best way to help individuals from having legal issues arise and, when they do occur, resolve issues quickly.

The idea behind the justice access centre pilot project is simple — to test an integrated approach that gives clients a one-

stop shop for information and services.

Clients can benefit from legal information, advice, mediation and other services that will help them resolve their justice problems. Most importantly, they can receive assistance all in one location.

The pilot projects will bring together legal, pro bono, advocacy, community agency and government services. Justice access centres are funded, in part, through grants from the Law Foundation of BC.

The Ministry of Attorney General, along with other justice, health and social service ministries, is continuing a three-year plan to ensure the justice system meets the needs of individuals, families, businesses and communities in an effective, timely and meaningful way.

We are certainly looking forward to seeing the results of these two pilot projects. We will be performing a thorough evaluation on the projects before any decisions will be made on possible expansion into other communities in British Columbia. I congratulate all the people involved in these two centres. ♦

New start date for client identification and verification rules

At their October meeting, the Benchers approved an implementation date of December 31, 2008 for the Law Society's new client identification and verification rules.

Originally slated to take effect November 1, the Benchers have delayed implementation of the rules to allow for consideration of suggestions received from members and others.

The proposed rules, recommended by the Law Society's Act and Rules Subcommittee, are based on a model rule prepared by the Federation of Law Societies of Canada as part of the legal profession's commitment to the fight against money laundering. These rules will be the basis for the requirements that will be expected of all lawyers after December 31, subject to any minor adjustments that may be recommended by the Subcommittee.

Frequently asked questions and information about the new rules are available online at lawsociety.bc.ca. See this month's *Practice Watch* for additional resources to help you implement the rules. ♦

In Brief

BENCH & BAR DINNER

Time is running out to order your tickets for the 24th annual Bench & Bar Dinner, which takes place on **Wednesday, November 19, 2008**. Recipients of the Law Society Award and the CBA Georges A. Goyer, QC Memorial Award for Distinguished Service will be honoured for their outstanding contributions to the cause of justice in British Columbia. Seating is limited — visit lawsociety.bc.ca for information and ticket order forms.

NOTICE OF BY-ELECTION

As Vancouver Bencher John J.L. Hunter, QC will complete his term of office as President and become a Life Bencher at year-end, a by-election has been set in Vancouver for

Monday, November 17, 2008. The term of the new Bencher will be for the period January 1, 2009 to December 31, 2009.

JACK WEBSTER AWARDS

Thirty outstanding BC journalists have been selected as finalists for the 2008 Jack Webster Awards. This year's recipients — including the winner of the Jack Webster Award for Excellence in Legal Journalism, sponsored by the Law Society — will be honoured at a ceremony at the Westin Bayshore on **Thursday, November 6**.

SALVATION ARMY PRO BONO PROGRAM — CALL FOR VOLUNTEERS

The Salvation Army is inviting lawyers, including retired lawyers, to participate in its

pro bono program. Volunteers must commit to a two-hour legal advice session once a month at a pro bono legal clinic. The Salvation Army pre-screens eligible clients to determine their legal issues and ensures they are prepared in order to maximize volunteer lawyers' time. Visit probono.ca for more details.

JUDICIAL APPOINTMENTS

Richard Neill Brown has been appointed to the Bench of the Supreme Court of British Columbia. Brown was called to the Bar in 1975 and has been a sole practitioner since 1998. ♦

Equity Ombudsperson: A resource for legal professionals

IF AN ARTICLING STUDENT, lawyer or staff member in your firm was experiencing personal harassment, discrimination or sexual harassment, would you be aware of it? Would you know how to handle it effectively?

In an effort to help stop workplace discrimination and encourage equitable workplace practices, the Law Society provides BC law firms with the services of Equity Ombudsperson Anne Bhanu Chopra. Anne will confidentially help law firms resolve concerns over possible discrimination, prevent discrimination and promote a healthy work environment. The Ombudsperson is not a "complaints vehicle" for the Law Society and does not report back on particular cases, only on statistics and trends.

With a background in law, coaching, teaching, human resources and industrial relations, Anne brings a diverse bundle of skills to her role. And as a lawyer with 14 years of experience in small and medium-sized firms, she understands and relates to the issues in a legal work environment from the perspective of management, as well as associates and law students.

Law firms can contact Anne to assist them with workplace initiatives to promote equal opportunities and prohibit discriminatory practices. For smaller law firms that don't have the resources, Anne can provide consultation in developing policies, using equity and harassment policy templates. Larger law firms may have equity and harassment policies but haven't yet developed

the culture and the awareness to support them. Anne is available to facilitate a 30 to 60-minute seminar to educate members of a firm about established policies from a behavioural perspective.

Law firms can contact Anne to assist them with workplace initiatives to promote equal opportunities and prohibit discriminatory practices.

Anne also provides confidential and non-judgmental support for victims of workplace harassment or inequity. There are many convoluted issues for a person experiencing harassment or discrimina-



tion. Anne can guide a person through this difficult time by providing a referral for counselling, informing them of various options available ranging from an informal resolution to the formal complaint process and legal routes, or being a sounding board for individuals who want support and understanding, but are not prepared to take any action.

"We use language such as 'third party,' 'independent' or 'neutral,'" explains Anne, "but the bottom line is that a person wants a non-judgmental, safe place to talk about a serious issue that is embedded with emotions." The biggest emotion that prevents a victim of harassment or discrimination from seeking support is the feeling of embarrassment. Anne withholds any judgment about the offending person or the way the victim has handled the problem. Her focus is on acknowledging the situation and finding a workable solution.

Anne advises that it's important to call her "even when there is only an incli-

nation that a problem exists. You don't have to be certain or define it — just be proactive. If things brew for too long, it's harder to mediate a situation." This advice applies to principals in law firms, victims of harassment or discrimination, as well as to individuals who realize that their words or actions may have been perceived as inappropriate. Anne will offer coaching to individuals or partners in a firm on how to come to an early resolution so it doesn't become a larger issue.

Anne wholeheartedly welcomes the opportunity to discuss respectful workplace initiatives with law firms and legal professionals.

"If a firm has one individual that is the 'bad apple' and is becoming a 'virus' within the workplace," cautions Anne, "it has huge implications." Sometimes a person's

mannerisms, their approach, or not knowing where the boundaries are can unintentionally offend others in a firm. Perhaps a person has the intention of being funny, however, their jokes are being perceived as sexual or racial harassment. Anne can help resolve these situations by meeting with the individuals involved and recommending strategies to restore productivity and respect in the firm.

After eight years as Equity Ombudsman, Anne knows that people are more inclined to contact her about an equity issue after they have had an opportunity to meet her. She endeavours to connect with the legal community through her volunteer work, presentations, information sessions, and training seminars. Anne wholeheartedly welcomes the opportunity to discuss respectful workplace initiatives with law firms and legal professionals.

For more information contact Anne Bhanu Chopra, Equity Ombudsman, at 604.687.2344 or achopra1@novuscom.net.❖

When to call the Equity Ombudsman:

- Your firm requires assistance in establishing workplace equity and harassment policies
- Your firm is interested in staff training sessions to promote a respectful workplace
- You are experiencing harassment or discrimination in your workplace
- You are witnessing an incident of harassment or discrimination in your workplace
- You are noticing a systemic problem involving equity in your workplace
- You suspect you "crossed the line" based on another person's reaction
- You are seeking advice on an equity-related office policy



Equity Ombudsman Anne Bhanu Chopra will help law firms resolve concerns over possible discrimination, prevent discrimination and promote a healthy work environment.

What Martin Wirick left in his wake

On August 26, 2008 the RCMP arrested Martin Keith Wirick — a disbarred BC lawyer — and his former client Tarsem Singh Gill. The charges include allegations of theft and fraud relating to more than 100 real estate transactions between 2000 and 2002. They are also charged with uttering forged documents and possession of stolen property. Wirick was released on bail and is scheduled to make his second court appearance in November.

FAMILIES, FINANCIAL INSTITUTIONS and the legal profession were left to pick up the pieces with the help of the Law Society in the wake of disbarred lawyer, Martin Wirick. At its worst, his misappropriations caused many to fear they might lose their homes. At its best, the situation demonstrated the fabric of the entire legal profession when it stepped up to deal with the Wirick crisis as it unfolded, compensating his victims and restoring public confidence.

When the story came to light in 2002, the sheer number of misappropriations quickly became the most ever by a lawyer in BC. His impact was enormous on the Special Compensation Fund, which was designed to compensate victims who lost money through a lawyer's misappropriation. Since 1969, the total amount of money paid out from the Fund was approximately \$52 million. Wirick's fraudulent actions teetered near that more than 30-year total with an incredible \$38.4 million paid to date.

Not surprisingly, Wirick's misconduct initiated the largest investigation ever undertaken by the Law Society. The accounting documents alone — including client ledger cards, cancelled cheques, cheque stubs and bank statements — filled 64 four-inch binders. And in the first two months following the appointment of a custodian of Wirick's practice, the Law Society copied all of Wirick's files and accounting records — the photocopy paper alone cost more than \$11,000.

The claims of innocent homeowners were finalized by the end of 2005. Today, there are only eight claims outstanding, which are all related to a single strata complex, made by one particular financial institution. The custodianship of Wirick's former practice is expected to be wound up in 2009.

HOW DID THE SCHEME WORK?

The scheme was complex. Much like a house of cards, with each card propping up another in a structure that would inevitably collapse under its own weight, the frauds were intertwined. Wirick's dealings were so complicated that the proceeds of one single conveyance could be traced to more than 40 other transactions.

Wirick's misconduct initiated the largest investigation ever undertaken by the Law Society.

Wirick's major client was developer Tarsem Singh Gill and his companies or nominees. Gill, or one of his companies or nominees, would purchase a property, re-develop it and sell it. Wirick would receive the sale proceeds. Then, instead of paying off the prior encumbrances, as he had undertaken to do, he misdirected the down payment and mortgage funds to Gill, his nominee or one of his companies.

Wirick's actions remained undetected for three years. The delay in the provision of mortgage discharges by financial institutions had allowed the scheme to remain under the radar. However by May 2002, the house of cards structure had begun to collapse.

WHAT DID LAWYERS DO TO FIX THINGS?

For its part, the Law Society reacted to the crisis by immediately taking steps to protect Wirick's clients and other affected parties. The society moved quickly to ensure that hardship cases received immediate attention. A custodian of Wirick's practice was appointed, and the Law Society conducted an extensive audit and investigation. In cases where a financial institution had begun

to foreclose on an innocent victim, the Law Society retained counsel to represent the victim's interests. Further, the society encouraged all potential claimants to file as early as possible — regardless of potential overlaps — to ensure a quick and thorough evaluation of all claims.

While the Law Society Rules at that time capped the annual aggregate payments made from the Fund at \$17.5 million, the Benchers agreed to remove the limit to ensure all valid claims would be covered.

At the time the Wirick claims were discovered, there was approximately \$7 million in the Special Compensation Fund, plus \$15 million of insurance. More money was needed, and BC lawyers provided it. In 2003, the Law Society increased the assessment paid by lawyers for the Special Compensation Fund from \$250 to \$600. Although the fee has now been reduced from its high point, lawyers will still be paying for Wirick's misconduct in their 2009 assessments.

Because of the Law Society's actions, not one of the hundreds of innocent homeowners lost their homes.

BC lawyers demonstrated their professionalism, shouldering a significant financial burden so that the Special Compensation Fund could protect the innocent victims. Ultimately, every lawyer in the province paid for the deception of one so that the society could fulfil its responsibilities in protecting the public.

Because of the Law Society's actions, not one of the hundreds of innocent homeowners lost their homes.

The impact on one family

The Law Society's efforts have been well received by the Ng family. They are but one of the families who suffered from Wirick's misappropriations.

In July 2001 Allan and Sanly Ng moved into their new Vancouver home with their children and Allan's parents. After about a year in their house they received a letter from their lawyer advising them there were two mortgages worth nearly \$400,000 still on their house and registered ahead of their own mortgage. Sanly remembered feeling confused and frightened. In October 2002 they submitted a claim to the Law Society. The Special Compensation Fund Committee took the necessary steps to ensure the family and their bank would be restored to the positions they would have been in had Wirick honoured his undertakings and dealt with their real estate matter as it should have been.

Of the experience, Allan told the Law Society last year, "we were very relieved and very grateful to the Law Society for its fair and fast handling of our claim. We knew from newspapers and television that many people had suffered losses through Mr. Wirick's actions, and that the Law Society had received hundreds of claims, totalling millions of dollars," recalled Allan. "We had lost faith in lawyers. The way the Law Society has responded to those claims, including ours, has restored our trust in the legal profession."



The Ng family was one of the many families affected by the real estate mortgage scheme operated by Martin Wirick and Tarsem Singh Gill.

WHAT HAPPENED TO THE MONEY?

The funds directed to Gill, his companies or nominees were used to service other mortgages that should have been discharged. The money was also used to purchase other properties that were redeveloped and sold to obtain funds to continue the fraud. Because the mortgages were being paid, the lenders did not become suspicious and because the lenders often took several

months to issue a mortgage discharge, the borrowers were not concerned either.

CAN ANY OF THE MONEY BE RECOVERED?

The Law Society received assignments of any claims the victims had against Wirick, Gill, his nominees or his companies. When both men declared bankruptcy, the assignments made the society the major creditor of their estates. The Law Society suc-

cessfully recovered the full amount of the Special Compensation Fund \$15 million insurance bond in place in 2002. The Law Society expects to secure further recoveries in the coming months.

WHAT HAPPENED TO WIRICK?

In May 2002, Wirick wrote to the Law Society admitting to breaches of undertak-

continued on page 16

What Martin Wirick left in his wake...
from page 15

ings in several real estate transactions and resigning his membership. The Law Society disbarred him in December 2002.

The auditors and investigators have found no financial profit to Wirick from his wrongdoing; rather, it appears Gill was selling his properties for less than his development costs, resulting in massive losses. In 2002 Wirick declared bankruptcy, listing contingent liabilities of about \$52 million.

The Law Society has adopted new rules and guidelines to try and prevent this from happening again.

Wirick's most recent employment has been with a pet food manufacturer and distributor in the lower mainland. This August he and Gill were arrested and charged and are on bail.

WHAT'S CHANGED TO TRY AND PREVENT ANOTHER WIRICK?

In addition to providing compensation to those who lost money because of Wirick's actions, the Law Society has adopted new rules and guidelines to try and prevent this from happening again.

Mortgage discharge reporting

Effective March 1, 2003, Law Society Rules require lawyers to report to the society if a mortgage lender fails to provide a discharge within 60 days. Lawyers must also report if another lawyer or notary fails to provide evidence of filing a mortgage discharge within 60 days.

Business Practices and Consumer Protection Act

The Law Society successfully lobbied the provincial government to enact section 72 of the *Business Practices and Consumer Protection Act*, which requires mortgage lenders to provide a discharge within 30 days of payment.

CBA standard form undertakings

The Law Society has been actively encouraging lawyers to use the Canadian Bar Association, BC Branch, standard form undertakings for real estate transactions. These undertakings require the vendor's lawyer to provide evidence of payments to the existing charge holders to the purchaser's lawyer within five days.

New trust accounting forms

The Law Society developed new trust accounting forms that require lawyers to provide more detailed information about their practices. The new trust assurance program

offers increased protection to the public because it allows the Law Society to detect accounting irregularities earlier and will help the society cut the severity and number of defalcation claims.

Lawyers in BC have proven they are willing to do what needs to be done to protect the public and compensate innocent victims.

THE FINAL ANALYSIS

The Law Society has taken every conceivable step to try and prevent anyone else from going through what others did because of Martin Wirick. Lawyers in BC have proven they are willing to do what needs to be done to protect the public and compensate innocent victims. ♦

WIRICK SPECIAL COMPENSATION FUND CLAIMS (AS OF OCTOBER, 2008)

Total number of claims received	556
Total number of claims withdrawn	60
Total amount claimed (after withdrawn claims deducted)	\$75 million
Number of claims decided	488
Total value of claims considered (including adjourned claims)	\$75.1 million
Amount of compensation paid to date	\$38.4 million
Number of overlapping claims	303
Value of overlapping claims	\$41.6 million
Number of claims left to be settled	8

Practice Direction from the Land Title and Survey Authority

THE DIRECTOR OF LAND TITLES has issued a change to the current practice set out in the *Land Title Practice Manual* regarding the form of a Waiver of Right of First Refusal. Future waivers should comply with the following practice, although there is a six-month transition period that began August 28, 2008 for any Waiver of Right of First Refusal submitted following the former practice:

Where a title is encumbered by a registered right of first refusal, the registrar must not register a freehold title in the name of a person other than the holder of the right of first refusal unless:

1. *the registrar receives a discharge of the right of first refusal; or*
2. *the holder of the right of first refusal waives the rights under it to the extent necessary to permit registration of the new freehold title in the name of that other person.*

If the holder of the right of first refusal gives a waiver in the manner described in (2) above, the registrar carries forward the right of first refusal to the new title together with an endorsement of the waiver. The waiver receives a running number for this purpose.

The waiver must be in Form C Release and Item 7, Additional or Modified terms must be completed. The Form C must show:

1. *the description of the interest in Item 3 as "Waiver of Right of First Refusal";*
2. *a selection of Release in Item 4; and*
3. *waiver language in Item 7 (to be included on a Form E Schedule).*

The Form C must be executed by the holder of the right of first refusal and may also be executed by the purchaser. Upon submission the waiver will be noted as a pending "Waiver of Right of First Refusal" on the title to the lands described within the Form C release.

For the full text of Practice Bulletin No. 0208 and an example of waiver of right of first refusal language to be included in Item 7 on a Form E Schedule, visit the Land Title and Survey Authority website at ltsa.ca. ♦



Photo by Lee Halliday Photography

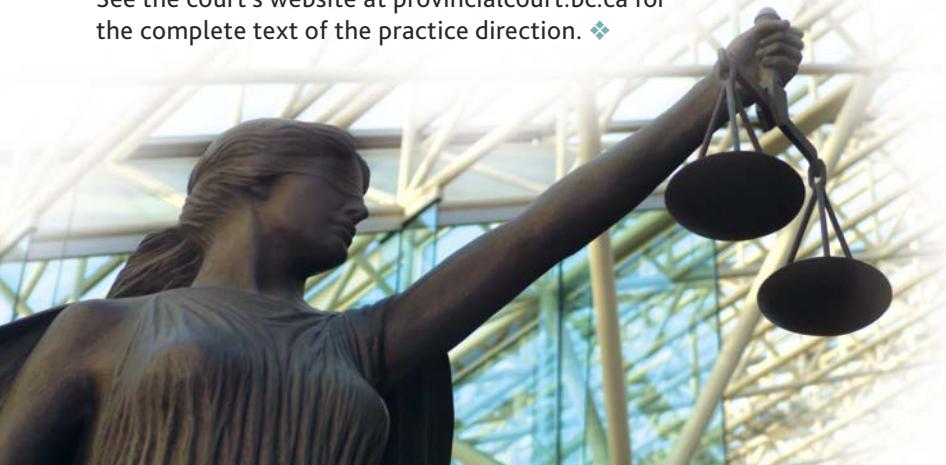
Notice from the Court

THE PROVINCIAL COURT has issued the following practice direction for the Quesnel – Cariboo Northeast District regarding **Criminal Caseflow Management Rules – Arraignment and Trial Confirmation Hearings, Compliance and Administrative Court Sittings**.

This direction has three objectives:

- expanded judicial assignments for Judicial Case Managers;
- simplified scheduling of breach allegations, to ensure their timely and fair determination;
- enforcing compliance with Criminal Caseflow Management Rules.

See the court's website at provincialcourt.bc.ca for the complete text of the practice direction. ♦



Opportunity to comment on marketing of legal services

THE ETHICS COMMITTEE is seeking comments from the profession on Chapter 14 (Marketing of Legal Services) of the *Professional Conduct Handbook*.

The Benchers have identified a general review of the chapter as one of the Law Society's priorities. They have directed the Committee to review the current rules and propose changes.

Some of the impetus for the review comes from the recent report of the Competition Bureau of Canada, *Self Regulated Professions, Balancing competition and regulation* (see competitionbureau.gc.ca). The Federation of Law Societies is also looking at the comments of the Competition Bureau in the context of its drafting of a Model Code of Professional Conduct for Canada.

The major recommendations of the Competition Bureau with respect to lawyer advertising are the following:

Generally, law societies should lift any unnecessary restrictions on advertising—that is, any restriction above and beyond the prohibitions on false, misleading and deceptive advertising—unless they can justify their existence. In particular, law societies should remove restrictions on the size, style and content of advertisements and allow non-lawyers to be compensated for referring services or clients.

Law Societies should evaluate the possibility of adopting a specialist certification program similar to that in Ontario. Alternatively, law societies could consider allowing members to be identified as leading practitioners in publications that rely on data from independent parties approved by the law

societies' ethics committee, as is the case in Saskatchewan.

Law Societies should abolish prohibitions on comparative advertising of verifiable factors, such as price.

The Ethics Committee has already received a submission regarding Chapter 14 of the Handbook from the Legal Marketing Association, Vancouver Chapter, on the issue of third-party testimonials and expects to receive a further submission from the Association on Chapter 14 issues generally.

To make a submission about any unwarranted constraints you feel lawyers face under the current marketing rules, or on the general approach of the Law Society to marketing, contact Jack Olsen, Staff Lawyer, Ethics at 604 443-5711 or jolsen@lsbc.org ♦

Third-party liability claims

THE ETHICS COMMITTEE has formulated an opinion about the obligations of lawyers who defend a third-party claim under an insurance policy. This follows the provisional opinion published in 2006, which the Committee invited members to comment on. It received a large amount of feedback from lawyers. After taking everything into consideration the Committee formulated the following opinion:

1. A lawyer may defend a third-party liability claim under joint retainer

A lawyer engaged by an insurer to represent an insured to defend a third-party liability claim may represent the insured alone or, with appropriate disclosure in accordance with Chapter 6 of the *Professional Conduct Handbook*, may represent both the insurer and the

insured jointly with respect to all or some aspects of the matter. Where the representation is structured as a joint retainer, the lawyer has duties to both the insured and the insurer, and must take care to identify and avoid conflicts of interest between the two clients. So long as the insured is a client, the Rules of professional conduct — and not the insurance contract — govern the lawyer's obligations to the insured.

2. A lawyer's duty when a conflict emerges

If, after commencing to act on a joint retainer, the lawyer receives information that evidences a conflict between the insured and the insurer, the lawyer must withdraw from the joint representation without disclosing the information giving rise to the conflict.

3. A lawyer's duty when the policy authorizes the insurer to conduct a defence

Where the policy of insurance authorizes the insurer to control the defence and to settle within policy limits in its sole discretion, the lawyer must inform the clients of those limitations on the representation. After the lawyer has communicated the necessary information to the insured, the lawyer may settle at the direction of the insurer.

For a further discussion of bad faith and negligence in the context of the defence of third-party liability claims, the Ethics Committee commends the advice contained in the October 2003 Law Society Alert! Bulletin (lawsociety.bc.ca/publications_forms/alert/03-02.html). ♦

As part of the Law Society's ongoing initiative to raise awareness about harassment and discrimination in the workplace, the Benchers' Bulletin is running a series of articles on the topic by Patricia Janzen, a partner at Fasken Martineau DuMoulin.

Harassment is a power game

IN JANZEN V. PLATY ENTERPRISES LTD., the case that provided Canada with its working definition of harassment, the Supreme Court of Canada also noted that sexual harassment involves an abuse of both economic and sexual power. In my last article, I reviewed the *Dupuis* case and the important role power played in the analysis of whether and to what degree a complainant must expressly reject or object to "unwelcome conduct."

A fundamental problem created by an imbalance in power is that it inhibits candid communication. The powerful person interprets silence or a smile as acquiescence. The greater the power, the greater the risk that no one will address the powerful person when he or she is out of line. The powerful person is left exposed, like the emperor in "The Emperor's New Clothes."

In law firms, regardless of their size or formal management structure, the greatest power generally resides with those partners that have thriving practices in the most lucrative areas and strong relationships with key clients.

Power in the employment relationship can come from many sources, including not only a person's place in the workplace pecking order but seniority, age, being a member of the majority, or having a valuable skill that is hard to replace.

In law firms, regardless of their size or formal management structure, the greatest power generally resides with those partners that have thriving practices in the most lucrative areas and strong relationships with key clients. The most vulnerable members of a law firm are usually its articling students as their ability to become licensed depends on successful completion of articles.

power building on power in particular way others. the

In an environment of power imbalance, speaking out is easier said than done. When a member of staff asks a lawyer to stop making jokes based on ethnic or racial stereotypes or when an articling student asks her principal to stop commenting on her attractive appearance, the lawyer or principal can feel personally attacked and take offence. But in raising the personal conduct of another, the staff member or articling student is doing more than simply stating disapproval of the conduct of another. The junior employee is asking the more powerful person to change — for the junior employee.

In an environment of power imbalance, speaking out is easier said than done.

Harassment victims may also be afraid that they won't be believed. Sexual harassment in particular usually involves a "he says/she says" scenario, with no witnesses. If the alleged harasser is a powerful partner in the firm, the junior employee will be concerned that the imbalance in power may affect which party is believed and will likely affect the ultimate outcome.

Articling students and junior lawyers are further inhibited from bringing a

complaint because they see complaining, whether internally or externally, as an inauspicious way to start a career. The role of victim is also inconsistent with the image of confidence and resilience that a junior lawyer usually wishes to project.

Consequently, the law has quickly evolved to address such cases.

Complainants that do come forward tell human rights tribunals how difficult it was to address the harasser directly or to file an internal complaint — that the imbalance of power in the work environment made it hard for them to step forward.

Consequently, the law has quickly evolved to address such cases. Where there is an imbalance of power between the complainant and the respondent, express objection to or rejection of conduct is often not required. The standard applied to powerful harassers is not whether they knew their conduct was unwelcome but whether or not they should have known better. ♦

PRACTICE WATCH, by Barbara Buchanan, Practice Advisor

Client identification and verification help

HELP IS ON THE WAY for lawyers looking for assistance in implementing the Law Society's client identification and verification rules.

Checklist

Once the rules have been approved by the Benchers, a client identification and verification checklist will be available on the Law Society website as part of the *Practice Checklists Manual*.

Online course

A short online course will be available on the Law Society website to help familiarize you with the new client identification and verification rules.

Frequently Asked Questions

In July 2008, 38 frequently asked questions and answers about the new client identification and verification rules were posted on the Law Society website. Visit the Practice Support section for important updates to these FAQs.

SCAMS, SCAMS AND MORE SCAMS

In September, the Law Society issued a Notice to the Profession that a BC law firm fell victim to a sophisticated counterfeit cheque scam. No clients were affected by the scheme; however, the firm suffered a loss. The scheme was similar to the phony collection scam described in the July 2008 issue of *Practice Watch* and an earlier Notice. This same scam is still making the rounds. Be on the look-out for it or some variation.

All these scams, however, involve a lawyer depositing funds into trust pursuant to a banking instrument that appears legitimate, and subsequently paying those funds, or a portion of them, out of trust.

The details, including the method of payment (certified cheque, bank draft, money order or even regular cheque), may

change as scamsters work to create a ruse that seems entirely plausible. All these scams, however, involve a lawyer depositing funds into trust pursuant to a banking instrument that appears legitimate, and subsequently paying those funds, or a portion of them, out of trust.

The phony debt collection scheme

The fraudster, a new "client" located outside of Canada, requests your assistance to recover a debt from a Canadian company in another province. You receive correspondence that appears legitimate. The correspondence lists a long distance telephone number and maybe even a "1-800" number. You contact the client's office and the telephone is answered professionally. You ask to be put through to various departments (e.g. the accounting department) and someone answers the extension.

You issue a demand letter to the "debtor," resulting in payment of some or all of the amount of the demand by way of

Protect yourself from would-be scammers

While this is not an exhaustive list, here are some steps that you can take to reduce your risk:

- Ask yourself why the new client chose you to act. Does it make sense that someone in New York, Tokyo, or China would ask you to send a demand letter to a debtor in a province outside of British Columbia?
- Has the client offered to pay you a fee that is higher than usual, or maybe a bonus?
- Ask the client for a retainer before you do anything. If you do not receive it or the retainer cheque bounces, that's a reason not to get involved.
- Verify both the client and the debtor's address and telephone number by checking for published addresses and numbers to see if they correspond to the information the client gave to you.

- If you send a demand letter, consider asking the debtor to make the cheque payable to the client, not to your firm, so that you are not using your trust account.
- If your demand letter results in a payment to your firm in trust, resist pressure to pay out from your trust account quickly.
- Wait for the payment instrument to clear before paying out. This reduces the risk, but may not eliminate the risk completely.
- Assuming you will not see the client face-to-face because the client is not present in Canada, obtain an agent in the client's home location to meet with the client and verify the client's identity.
- Trust your judgment if you get a bad feeling.

a banking instrument (e.g. certified cheque or bank draft), made out to your firm in trust. The instrument looks real and, assuming that it is, you deposit it into your trust account and transfer the funds to your "client." You later discover that the very authentic looking instrument was phony.

To best avoid the risk, contact your banker and ask him or her to contact the issuing bank to verify the instrument's authenticity and confirm to you when it is safe to pay out. **You cannot assume that the telephone numbers that appear on the payment instruments are legitimate.** Keep a record of the advice given.

Other scams

Over the past few years, the Law Society has described a number of identity scams, often in the real estate context. Typically these scams are attempted in situations where no realtor is involved. Another common scam is value fraud. Typically the fraudster agrees to purchase real property and flips it to a complicit purchaser at an artificially inflated price. This step positions the purchaser to deceive a mortgage lender as to the true value of the property when obtaining a loan. In Ontario, phony commercial loans transactions have surfaced and may make their way to BC.

If you think you have been contacted by a fraudster, please contact the Law Society's Practice Advice Department.

Sometimes the lawyer is waiting for a mortgage discharge before ordering a State of Title Certificate and that is the reason for the delay. However, the fact that you are waiting does not excuse you from your reporting obligations.

TITLE REPORTS — TYING UP LOOSE ENDS WITH LENDERS

When acting for a financial institution client in connection with the registration of a mortgage, you agree to provide a form of title report to the lender. Some lenders have complained to the Law Society that lawyers are not providing this information in a timely manner.

Sometimes the lawyer is waiting for a mortgage discharge before ordering a State of Title Certificate and that is the reason for



the delay. However, the fact that you are waiting does not excuse you from your reporting obligations.

Communicate with your client about what is happening. Review the instructions that you typically receive from the lender and remind your staff to bring any warning letters to your attention.

According to Chapter 3, Rule 3 of the *Professional Conduct Handbook*, a lawyer must serve each client in a conscientious, diligent and efficient manner so as to provide a quality of service at least equal to that which would be expected of a competent lawyer in a similar situation. Rule 3 sets out a number of ways that a lawyer's service may be measured, e.g. keeping the client reasonably informed.

NO CASH RULE — RENT AND REAL ESTATE CONVEYANCES

A few cautions about the "no cash rule" (Rule 3-51.1) in relation to collecting rents and conveyances of real property:

Rent

If you are receiving monthly rent on behalf of a client from your client's tenant, note that you must not receive an aggregate amount in cash of \$7,500 or more in respect of any one client matter or transaction. Accordingly, if you accept cash and deposit it in your trust account, you could quickly find yourself in violation of the no-cash rule. You may deposit into trust cash that in the aggregate amounts to less than \$7,500 for the client matter. For example, if the tenant's monthly rent is \$1,000 and you make monthly cash deposits, you would

have deposited \$8,000 in the aggregate by the eighth month. This is not permitted.

Real estate conveyances

Likewise, if you are acting for a client who is purchasing real property and the client wants to provide you with cash as part payment of the purchase price, you must not receive an aggregate amount in cash of \$7,500 or more. For example, if your client wants to provide you with \$25,000 in cash and the rest of the purchase money is to be paid by way of mortgage funds, you should not accept the \$25,000 cash payment.

Make sure that your clients and your staff are aware that you cannot receive cash in amounts of \$7,500 or greater. To be even safer, you could have a policy of not accepting cash at all.

POOLED TRUST ACCOUNTS

Receiving cancelled cheques and bank statements in electronic form

Rule 3-52 (1) (c) requires lawyers to periodically receive cancelled cheques and bank statements for their pooled trust account(s). These cancelled trust cheques and bank statements may be received or retained by lawyers in an acceptable electronic form (Rule 3-52 (1.1)).

Some financial institutions have advised lawyers that they will no longer provide them with their actual cancelled trust cheques. For example, a bank has advised its lawyer customers that it will provide them with paper copies of cheque images and electronic cheque images with their paper bank statements. The images will show both the front and back of each cheque. Is this acceptable?

The Law Society's Trust Assurance Department has determined the following acceptable electronic forms for cancelled trust cheques:

Acceptable electronic form for cancelled trust cheques

1. A CD-Rom of the cheque images, including the front and back of each cheque, provided by the bank to the lawyer on a monthly basis with the monthly bank statement.
2. Scanned paper copies of the cheques, including the front and back of each cheque, with the monthly bank statement.

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*Client identification and verification help...
from page 21*

3. PDF copies of the cheques, including the front and back of each cheque, stored on the law firm's server or on a disk in the law firm's possession.

Cheque images stored on the financial institution's server and available to lawyer customers only through on-line access are **not** considered to be acceptable electronic form for cancelled trust cheques.

If you are not certain whether or not your financial institution is providing cancelled trust cheques to you in an acceptable electronic form, you are welcome to contact the Trust Assurance Department at 604-697-5810 or trustaccounting@lsbc.org or contact a practice advisor for more information.

THE TOP 10 COMPLIANCE AUDIT EXCEPTIONS

The Law Society's Trust Assurance Department has been conducting financial responsibility compliance audits since October 2006. As of September 26, 2008, the

top 10 compliance exceptions found by the department during audits are as follows:

1. Cash transactions not recorded in cash receipt book of duplicate receipts.
2. Bank and trust listing balances not reconciled; no supporting documentation.
3. Cash receipt book of duplicate receipts not maintained.
4. Trust bank reconciliations not prepared within 30 days of month end.
5. Withdrawals from trust not made in accordance with Rule 3-56.
6. Trust account records such as trust transfer journal or accounts receivable sub-ledger not maintained.
7. Sufficient funds not kept on deposit to meet the lawyer's obligations in respect to funds held in trust for clients.
8. CDIC letter either not sent or not sent within correct time frame.
9. Unclaimed trust funds not dealt with on a timely basis.
10. Trust shortages not corrected as soon as discovered.

Keep off the top 10 list. The Law Society has resources to assist you. For example,

see *The Bookkeeper's Handbook* prepared by the Trust Assurance Department, available in the Regulation & Insurance / Trust Assurance section of the Law Society website.

LAWYERS PROVIDING INDEMNITIES

New regulatory requirements for the real estate sector under the federal *Proceeds of Crime (Money Laundering) and Terrorist Financing* legislation has led some realtors to engage lawyers to be their agents for the purpose of providing identity verification services.

The regulations require that realtors obtain information to verify the identity of their clients and keep related records for all real estate sales and purchases. If a realtor's client resides in Canada but the realtor cannot meet with the client in person to obtain and record the required information, the realtor can use an approved agent or mandatory (a form of representative)—who can be another realtor, a lawyer, or a notary—to identify the client. In such case, there must be a contract between the realtor and the agent or mandatory to identify the client on behalf of the realtor.

The Law Society has learned that realtors may be asking lawyers to be their agent and enter into a real estate "Identification Mandatory/Agent Agreement" that purports to require the lawyer, as the identification agent, to provide identification particulars regarding the client and to indemnify the real estate broker against any claims, liability, costs and reasonable expenses arising directly from the agent's negligent acts or omissions in the performance of the services. Since lawyers are responsible for their own negligence, an indemnity is largely unnecessary. As your insurance policy responds to claims against you in negligence, not in contract, you will want to contact the Lawyers Insurance Fund before agreeing to any indemnity.

Of course, even if the realtor agrees to leave out the indemnity, you will want to consider whether you want to accept the role. You may prefer to act for the purchaser or seller instead.

FURTHER INFORMATION

Feel free to contact Practice Advisor Barbara Buchanan at 604-697-5816 or buchanan@lsbc.org for confidential advice or more information regarding any items in *Practice Watch*. ♦



PRACTICE TIPS, by Dave Bilinsky, Practice Management Advisor

Money matters

*When you've got to pay them now or
they'll take it from you later
You got to have faith ... ♪*

—Words and Music by Rick Hahn, George Thatcher, recorded by Air Supply.

GST ON MEDICAL-LEGAL REPORTS

One question that I am asked on a repeated basis is whether or not Medical-Legal Reports and copies of Clinical Records bear GST. There is some confusion over this point, as physicians may or may not charge GST when they render their accounts for the supply of these services.

This topic is covered in detail in GST Policy Statement p-209, *Lawyers' Disbursements*, which is available on the Canada Revenue Agency's website (cra-arc.gc.ca). The policy states that supply of these services is taxable, regardless of whether or not the physician charged GST on their ac-

count for these reports. However, the supply of these reports cannot be claimed as exempt medical services under the *Excise Tax Act*, Schedule V. Accordingly, they are taxable in the hands of the lawyer.

There are a number of reasons why a physician may not charge GST on their invoice, not the least of which is that they may be under the \$30,000 taxable limit (one does not need to charge GST if the annual total of these services does not exceed \$30,000).

Whether or not the physician charges GST does not change the requirement for lawyers to remit GST on these reports, and presumably, charge for the GST when rendering their accounts and include these amounts on their Bills of Costs.

CERTIFIED CHEQUES

Chapter 11, Rule 8, footnote 1 of the *Professional Conduct Handbook* states that:

Unless funds are to be paid under an agreement that specifically requires another form of payment or payment by another person, a lawyer must not refuse to accept another lawyer's uncertified cheque for the funds. It is not improper for a lawyer, at his or her own expense, to have another lawyer's cheque certified.

It may be prudent for a lawyer receiving a trust cheque from another lawyer or firm to request that the paying law firm certify their trust cheque, at the expense of the receiving lawyer, in advance of the closing date.

There are a number of reasons for doing so, not the least of which is the increasing amount of fraud being attempted against lawyers and law firms. Further, banks are frequently placing "holds" on uncertified funds, including lawyer trust cheques, before depositing them. A seven-day "hold" can wreak havoc on domino real estate transactions.

Certified funds provide greater security when funds must flow quickly and reliably, such as "back-to-back" real estate transactions. If these issues are raised in advance, all parties can make the proper accommodations to allow matters to close quickly and reliably.

Lastly, it is often inconvenient for the receiving lawyer to take the paying lawyer's trust cheque to the bank. Reimbursing the sending lawyer a reasonable amount to certify their trust cheque allows the expense to be built into the transaction. Furthermore, it assures the sending lawyer that they are being compensated for their time and trouble to certify their trust cheque, allowing for a sense of enhanced security for the entire transaction.

In a world where lawyers often have to pay out funds on the day they were received, it is comforting to know that you can have the highest degree of faith in the financial instrument on which you are relying. ♦



Discipline digest

PLEASE FIND SUMMARIES with respect to:

- Raymond William Barton
- Andrew James Bonfield
- Burt Donald Currie
- Edward George Jackson
- Richard Neil Toews
- Jeffery-Emanuel Wittmann

For the full text of discipline decisions, visit the Regulation & Insurance / Regulatory Hearings section of the Law Society website at lawsociety.bc.ca.

RAYMOND WILLIAM BARTON

Quesnel, BC

Called to the Bar: September 13, 1983

Non-practising: January 1, 2004

Ceased membership: January 1, 2006

Discipline hearings: September 28, 2006 and February 12, 2007

(Facts and Verdict), July 3, 2008 (Penalty)

Panel: G. Glen Ridgway, QC, Chair, Ralston Alexander, QC and Robert Brun, QC

Reports issued: April 27, 2007 (2007 LSBC 24) and August 14, 2008 (2008 LSBC 25)

Counsel: Jaia Rai for the Law Society and no-one on behalf of the Respondent

FACTS

On March 8, 2006 the Law Society issued a citation alleging that Raymond William Barton had engaged in unauthorized practice under the *Legal Profession Act* by performing or offering legal services to WF and his spouse, MF, for a fee, while a non-practising member of the Law Society.

Early in 2004, WF became aware that a mineral claim he purchased from WP was much smaller than he had believed when he registered the bill of sale at the Ministry of Energy, Mines and Petroleum Resources (Mineral Titles Branch) the previous year. In June or July 2004, WF retained Barton to determine the true size of his claim. WF and MF both told the Law Society that WF had gone to see Barton as a lawyer.

In several subsequent meetings, some of which were also attended by MF, WF and Barton discussed various issues relating to verification of the mineral claim, including terms and delivery of payment for Barton's services and for the services of third parties. The testimony before the hearing panel was consistent on the point that Barton had communicated his status as a non-practising lawyer to WF at the time of their first meeting. However, the testimony was inconsistent regarding the amounts and terms of various payments made by and on behalf of WF, and the terms of engagement between WF, other parties and Barton.

VERDICT

The hearing panel determined that when the course of dealings between WF and Barton was viewed as a whole, Barton's actions constituted the unauthorized practice of law, but not professional misconduct.

The panel found it significant that WF initially contacted Barton because he believed him to be a lawyer, and that in their first meeting Barton told WF he expected to be reinstated in the near future. The absence of a formal accounting and the resulting uncertainty regarding Barton's handling of funds paid by WF were noted by the panel as illustrations of the risk to

the public caused by the unregulated practice of law.

The panel accepted that Barton clearly told WF that he was not a practising lawyer when he took conduct of the matter, and that he genuinely believed his practising status was about to be reinstated by the Law Society shortly after the retainer commenced. The panel concluded Barton's conduct was not, in all the circumstances, dishonourable or disgraceful and accordingly fell short of professional misconduct.

PENALTY

Barton did not appear at the penalty hearing but applied for an adjournment of the proceedings by way of an email transmission. The panel was satisfied that Barton was aware of the July 3, 2008 hearing date since late October 2007 and, therefore, denied Barton's application for an adjournment.

The panel emphasized the seriousness of the unauthorized practice of law given that Barton had previously been called to the Bar. Further, the panel noted that Barton did not appear to acknowledge his misconduct and took no steps to redress the impropriety.

After consideration, the panel ordered that Barton:

1. pay a fine in the amount of \$1,500; and
2. pay costs in the amount of \$7,500.

ANDREW JAMES BONFIELD

Vancouver, BC

Called to the Bar: May 19, 2000

Discipline hearing: June 25, 2008

Panel: Leon Getz, QC, Chair, Kathryn Berge, QC, David Renwick, QC

Report issued: July 29, 2008 (2008 LSBC 23)

Counsel: Eric Wredenhagen for the Law Society, Jerome Ziskrout for Andrew Bonfield

FACTS

Andrew Bonfield was called to the Bar in May 2000 and has operated as a sole practitioner since September 2000.

From approximately 2002 to 2007, Bonfield was not registered for the remittance of British Columbia Provincial Sales Tax. Bonfield collected the sales tax from his clients, but failed to remit the funds to the provincial government.

In 2005 and 2006, Bonfield collected Goods & Services Tax from his clients, but failed to remit the funds to the Canada Revenue Agency at all or in a timely manner.

In 2005, Bonfield submitted a Trust Report to the Law Society representing that his practice had paid all PST and GST remittances to the government when due, when in fact that statement was not true.

ADMISSION AND PENALTY

Bonfield admitted that he failed to register for and remit funds due to the provincial government for the PST, and that he failed to remit funds due to the Canada Revenue Agency for the GST. He acknowledged that he was grossly negligent in incorrectly representing this information to the Law Society. He further admitted that these actions constitute professional misconduct.

Pursuant to Law Society Rule 4-22, the hearing panel accepted Bonfield's admissions and ordered the following disciplinary action:

1. a fine in the amount of \$5,000 payable by December 31, 2009;
2. costs in the amount of \$1,500 payable by December 31, 2009; and

3. delivery of quarterly statutory declarations to the Law Society for the period commencing July 1, 2008 and ending December 31, 2009. These declarations will set out for the preceding quarter:

1. total billings to clients,
2. amounts billed in respect of PST and GST,
3. amounts collected in respect of PST and GST, and
4. amounts remitted to the provincial and federal governments in respect of PST and GST.

EDWARD GEORGE JACKSON

North Vancouver, BC

Called to the Bar: May 15, 1992

Hearing date: April 15, 2008

Panel: Joost Blom, QC, Chair, Richard Stewart, QC, Ronald Tindale

Reports issued: September 12, 2008 (2008 LSBC 28)

Counsel: Maureen Boyd and Eric Wredenhagen for the Law Society and no-one on behalf of Edward Jackson

FACTS

On June 13, 2007, a citation was issued against Edward Jackson, alleging three counts of misconduct. The allegations were failure to meet professional financial obligations incurred or assumed in the course of practice, failure to reply promptly or at all to the communications from the Law Society, and failure to safeguard confidential client materials.

Failure to Meet Professional Financial Obligations

Jackson asked a member of the Law Society to attend in his place as In-Custody Duty Counsel at North Vancouver Provincial Court on December 15, 2004. Jackson agreed to pay the member the amount payable by the Legal Services Society in respect of such attendance. The member attended and completed the required duty counsel billing form and provided it to Jackson. Jackson received payment from the Legal Services Society in early 2005.

In April 2005, Jackson advised the member of personal circumstances that made it difficult for him to provide payment. While the member did not then object to a delay, a complaint was made to the Law Society on August 24, 2006 with regard to non-payment. The member received payment in April 2007.

Failure to Respond to the Law Society

On April 19, 2006, the Law Society received a complaint from Mr. and Mrs. R, clients of Jackson. Jackson responded to the complaint in a letter to the Law Society on May 8, 2006, outlining some personal problems he was having and advising that he had returned the Clients' file materials in late April 2006.

The Law Society wrote several letters to Jackson seeking information about the scope of his practice and whether he had any arrangements with another lawyer to assist him in the event he was unable to meet his obligations to his clients. A substantive response from Jackson was not received.

Failure to Safeguard Confidential Client Materials

On November 1, 2006, the Law Society was advised that Jackson had been evicted from his apartment and that a file cabinet containing confidential client files had been removed by the landlord. On that same day, the Law Society received a telephone call from RL, who identified himself as a friend of Jackson's, advising that he was arranging to have Jackson's property, including the client files, taken to a secure storage facility.

On November 8, 2006, as the files remained unsecured, Law Society staff took into safekeeping all files with confidential client information from Jackson's apartment. The Law Society wrote to Jackson to advise that they had taken possession of the files and to contact them immediately to discuss arrangements for suitable storage. Jackson did not contact the Law Society to view or take possession of the files.

ADMISSION AND PENALTY

Jackson admits that he failed to meet his professional financial obligations and that this conduct constitutes professional misconduct. Jackson also admits that he received and read five letters from the Law Society, that he failed to provide a substantive response to such letters, promptly or at all, and that his failure to respond constitutes professional misconduct. Jack-

BERT DONALD CURRIE

Fort St. John, BC

Called to the Bar: May 12, 1981

Discipline hearing: June 20, 2008

Panel: Glen Ridgway, QC, Chair, Emily Reid, QC, Robert Punnett

Report issued: July 14, 2008 (2008 LSBC 21)

Counsel: Eric Wredenhagen for the Law Society, Bert Donald Currie on his own behalf

FACTS

Bert Currie was retained by client JW in May 2007 in connection with his arrest. JW consulted Currie about the matter and provided him with a \$750 retainer and two post-dated cheques. JW was later advised that police would not be proceeding with charges. He subsequently attended Currie's office, at which time the post-dated cheques were returned and he was advised that either part or all of the retainer would be returned.

Over the next several months, JW attempted to contact Currie's office with regard to the return of the retainer. By November 2007, he had not received either a statement of account or return of the retainer. He subsequently complained to the Law Society.

Currie failed to respond in a timely manner or at all to Law Society correspondence pertaining to this complaint, including letters from the Law Society dated November 26, 2007, December 18, 2007, January 3, 2008, January 15, 2008 and January 24, 2008.

ADMISSION AND PENALTY

The panel noted that failure to respond to communications from the Law Society is a serious matter. Often the matter that originated the complaint does not proceed to a discipline panel; what does proceed is a citation for a lawyer's failure to respond to Law Society communications with respect to that complaint.

Currie admitted that his failure to respond promptly or at all to correspondence from the Law Society was contrary to Chapter 13, Rule 3 of the *Professional Conduct Handbook*. He further admitted that his conduct constituted professional misconduct.

Pursuant to Law Society Rule 4-22, the hearing panel accepted Currie's admission and ordered that he:

1. Pay a fine in the amount of \$1,500; and
2. Pay costs in the amount of \$1,000.

son further admits that his failure to ensure the privacy and safekeeping of confidential client information is contrary to his duties and that such an act constitutes professional misconduct.

On the basis of submissions of both the Law Society and the Respondent and taking into account the evidence of professional misconduct, Jackson's professional conduct record, and the multiple incidents over extended periods of time, the Panel found that Jackson's actions constitute a serious matter and require a significant penalty. The hearing panel ordered that Jackson, who was currently a non-practising member;

1. be suspended for one month, effective immediately upon Jackson fulfilling the requirements, paying the fees and becoming a practising lawyer;
2. be referred to the Practice Standards Committee, effective at the same time as 1.; and
3. pay costs in the amount of \$2,000 by August 31, 2010.

RICHARD NEIL TOEWS

Squamish, BC

Called to the Bar: June 4, 1985

Discipline hearing: August 28, 2008

Panel: Carol Hickman, Chair, William Sullivan, QC, Robert Brun, QC

Report issued: September 19, 2008 (2008 LSBC 29)

Counsel: Gerald Cuttler for the Law Society and Robin McFee, QC for Richard Toews

FACTS

In March 2004, Richard Toews was retained by SC to prepare a separation agreement between her and her husband, JR. SC provided Toews with full details about their incomes and assets, including the value of their Squamish property, estimated at \$240,000.

After the separation agreement was concluded, SC and JR decided to sell the property. In June 2004 they retained realtor DS who listed the property for sale for \$285,000. The listing expired in September and the property was taken off the market.

In March 2005 SC re-listed the property, this time retaining GB as her realtor. It was initially listed at \$265,000 but was reduced to \$260,000 in April.

In May 2005, Toews asked DS, SC's first realtor, to write up an offer to purchase the Squamish property for \$225,000 in the name of L. Ltd, a company which Toews controlled. Toews told DS he had previous dealings with SC and did not want her to know about his involvement in the purchase.

When presented with the offer, SC asked her current realtor, GB, to find out who was behind the offer. She was told that the client did not want to be identified. The property was eventually sold to Company L. Ltd. for \$247,000.

ADMISSION AND PENALTY

Toews admitted that he professionally misconducted himself, first by failing to disclose that he was, in essence, the offeror and, second, by failing to seek and obtain SC's informed consent that she wanted to sell the said real property to a company that he controlled.

The panel accepted Toews' conditional admission and the penalty proposed under Rule 4-22. Accordingly, the panel ordered that Toews pay the following on or before October 31, 2008:

1. A fine in the amount of \$2,500; and
2. Costs of the proceedings in the amount of \$3,333.

The panel noted that their decision is not to be taken as a precedent that, in all cases where a lawyer is offering to purchase an asset from a former client, in addition to disclosure of the lawyer's interest, that the lawyer must both "seek and obtain informed consent" before proceeding with the matter. That will depend on all of the circumstances in each case.

JEFFERY-EMANUEL WITTMANN

Vancouver, BC

Called to the bar: December 15, 1995 (previously called in Ontario in 1992)

Hearing Dates: July 30, 2008

Panel: James Vilvang, QC, Chair, Joost Blom, QC, Leon Getz, QC

Report issued: August 6, 2008 (2008 LSBC 24)

Counsel: Maureen Boyd for the Law Society and Patrick Lewis for Jeffery-Emanuel Wittmann

FACTS

In April 2001 Jeffery-Emanuel Wittmann was employed as an independent contractor for Company B. He provided legal services in exchange for a salary of at least \$4,000 per month. He issued bills to B that included GST and PST.

B paid Wittmann regularly for his services, including defined amounts of GST and PST until March 31, 2003 when he stopped working for B because of a change in company ownership. During that same period between 2001 and 2003 Wittmann was also providing services to other clients through Wittmann Law Corporation.

Sometime during 2002, Wittmann began experiencing personal financial difficulties and advised the Law Society that he declared bankruptcy on November 18, 2003. He applied for discharge two years later and was granted a conditional discharge from bankruptcy in November 2005.

On February 23, 2004 Wittmann filed a GST return for a period from January to November 2003 and remitted net tax owing in the amount he calculated as \$972.93. He failed to remit GST due to the Canada Revenue Agency in the total amount of \$21,528.28 and instead used those funds for his own purposes.

In May 2003 the CRA served a garnishing order upon Wittmann's then employer, but no funds were remitted because of the firm's view that the order was defective. Thus, the unpaid GST was subsumed as a debt within Wittmann's bankruptcy.

During that same timeframe that Wittmann worked for Company B he collected \$13,467.31 in PST from his clients, but failed to remit funds due to the provincial government. The unpaid PST debt was subsumed within Wittmann's bankruptcy.

ADMISSION AND PENALTY

Wittmann admits that between April 2001 and March 2003 he collected GST and PST from his clients but failed to remit the funds due to the CRA and provincial government, as required by law. He further admits those failures are professional misconduct and are contrary to Chapter 2, Rule 2 of the *Professional Conduct Handbook*.

The panel accepted Wittmann's admission and proposed penalty under Rule 4-22, and ordered that by January 31, 2010 he pay:

1. a \$3,000 fine; and
2. costs of \$1,500.

Credentials hearing

Law Society Rule 2-69.1 provides for the publication of summaries of credentials hearing panel decisions on applications for enrolment in articles, call and admission and reinstatement. If a panel rejects an application, the published summary does not identify the applicant without his or her consent.

For the full text of hearing panel decisions, see the Regulation & Insurance section of the Law Society's website at www.lawsociety.bc.ca.

ADAM CHARLES MUNNINGS

North Vancouver, BC

Hearing (application for enrolment for articles): August 12, 2008

Panel: Glen Ridgway, QC, Chair, Leon Getz, QC, Kenneth Walker

Report issued: September 3, 2008 (2008 LSBC 26)

Counsel: Henry Wood for the Law Society and Michael Tamm for the applicant

Adam Munnings completed a law degree in May 2005. Since May 2006 he has been employed in the legal department of a BC Crown corporation. His co-workers encouraged him to pursue articles and supported his good character.

Munnings filed an Application for Enrolment for Articles in October 2007. On that application, he reported recent instances of excessive alcohol consumption. The Credentials Committee investigated the matter and a credentials hearing was ordered.

The Credentials Committee asked a physician with expertise in chemical dependency to assess Munnings' condition. Based on his history of alcohol consumption and a liver function test, the physician concluded that Munnings has an alcohol abuse disorder, which could potentially lead to severe negative consequences in the future.

Munnings testified that he has since reduced both the frequency and amount of alcohol he consumes. In anticipation of the credentials hearing, he also took a voluntary liver function test, which indicated normal results.

The panel was satisfied that Munnings was of good character and repute and is fit to be enrolled as an articling student, subject to the following conditions:

1. During his articles, his principal or designate shall prepare four reports, outlining his performance with a focus on any concerns relating to abuse of alcohol;
2. Prior to each report, a random test for liver function shall be conducted at the request of his principal; and
3. During his articles, a further sample to test for liver function may be requested by the Law Society.

The panel ordered costs of \$2,000.

Services for members

Practice and ethics advisors

Practice management advice – Contact **David J. (Dave) Bilinsky**, Practice Management Advisor, to discuss practice management issues, with an emphasis on technology, strategic planning, finance, productivity and career satisfaction. Email: daveb@lsbc.org Tel: 604-605-5331 or 1-800-903-5300.

Practice and ethics advice – Contact **Barbara Buchanan**, Practice Advisor, Conduct & Ethics, to discuss professional conduct issues in practice, including questions on undertakings, confidentiality and privilege, conflicts, court-room and tribunal conduct and responsibility, withdrawal, solicitors' liens, client relationships and lawyer-lawyer relationships. Tel: 604-697-5816 or 1-800-903-5300 Email: advisor@lsbc.org.

Ethics advice – Contact **Jack Olsen**, staff lawyer for the Ethics Committee to discuss ethical issues, interpretation of the *Professional Conduct Handbook* or matters for referral to the committee. Tel: 604-443-5711 or 1-800-903-5300 Email: jolsen@lsbc.org.

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

Interlock Member Assistance Program – Confidential counselling and referral services by professional counsellors on a wide range of personal, family and work-related concerns. Services are funded by, but completely independent of, the Law Society and provided at no cost to individual BC lawyers and articled students and their immediate families. Tel: 604-431-8200 or 1-800-663-9099.

Lawyers Assistance Program (LAP) – Confidential peer support, counselling, referrals and interventions for lawyers, their families, support staff and articled students suffering from alcohol or chemical dependencies, stress, depression or other personal problems. Based on the concept of "lawyers helping lawyers," LAP's services are funded by, but completely independent of, the Law Society and provided at no cost to individual lawyers. Tel: 604-685-2171 or 1-888-685-2171.

Equity Ombudsperson – Confidential assistance with the resolution of harassment and discrimination concerns of lawyers, articled students, articling applicants and staff in law firms or other legal workplaces. Contact **Equity Ombudsperson, Anne Bhanu Chopra**: Tel: 604-687-2344 Email: achopra1@novuscom.net.

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The Law Society
of British Columbia

