



BENCHERS' BULLETIN

Keeping BC lawyers informed

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The disruption of 2020

by Craig A.B. Ferris, QC

BENCHERS' BULLETIN

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

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

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IT MAY BE too early to look back and revisit 2020. Many of our fellow citizens have experienced immense hardship, suffering and loss. None of this ought to be overlooked or forgotten. As president of the Law Society, I would like to issue a public thank you on behalf of our Benchers and staff to everyone who has worked hard to keep us safe and to keep us going — from doctors, nurses and hospital staff, to delivery people and store clerks, and to government officials, judges and court staff. Truly, thank you.

Against this backdrop, it is a great source of pride to me that the Law Society — the Benchers and staff alike — used the disruption of 2020 to embark upon an ambitious journey. We have shaken things up, moved the needle in terms of Law Society functions, and done the same for how the practice of law will be organized going forward.

The list of policy initiatives and milestones achieved is long. It includes a Futures report, implementing a regulatory innovation sandbox that will allow paralegals, technology companies and law firms to “bend the rules” under our supervision, in order to determine whether innovations are in the public interest. It also includes approval of an examination of alternatives to articles leading to other pathways into the profession, implementing fees by instalment, and a COVID-related fee reduction plan. We passed a revised legal aid strategy and an equity, diversity and inclusion work plan. We reviewed our discipline process and adopted a number of recommendations to make the procedures more effective and efficient. We created a better tribunal process. We modified our confidentiality obligations and moved forward with the potential for cost recovery of investigations. We are finalizing the restructuring and rebranding of the Lawyers Indemnity Fund to create a better institutional separation between it and the Law Society. We approved mandatory cultural

competence training. We did all of this in the context of participating in the Cullen Commission and developing a new five-year strategic plan. And, of course, we did all of this during Covid.

Within the Law Society, there is a recognition of the need to pursue change if we are to improve the availability of affordable legal services, particularly for those British Columbians who currently cannot access our justice system. The Law Society, the legal profession and everyone involved in the justice system need to separate principle — the things that we believe in — from practice — the way that we do things. This mindset is embodied in Recommendation 1 from our Futures report:

The Benchers need to recognize where changes are possible, and to be prepared to advance bold and innovative approaches to how law is practised and regulated, in order to address items listed in its mandate under section 3 of the *Legal Profession Act*.

Our Futures report identifies what can and what ought to change and sets out a direction for future Benchers and future members of the legal profession. This change is in what we do and how we do it, but, just as importantly, it is a change to our acceptance of the risk of innovation.

Being bold, change management and innovation are not easy in a profession that is trained to be cautious, to value precedent and to honour our traditions. Indeed, Reid Trautz, former vice-chair of the American Bar Association Law Practice Futures Initiative, has written concerning what holds lawyers back from change and innovation. He provides a “look in the mirror” moment for each of us when discussing the mindset of lawyers: “As lawyers, we are trained to question facts and hunt for the negative in pursuit of the interests of our clients.

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Addressing the challenges posed by Covid

by Don Avison, QC

WHEN I STARTED at the Law Society nearly three years ago, we had just launched Strategic Plan 2018-2020, which set out the Benchers' vision of making the Law Society more outward-looking. It is a plan that calls for more legal aid advocacy, responding to lawyers' concerns about regulatory processes that hinder their ability to provide

Staff also implemented a fee instalment policy aimed at making things a little easier for everyone, and while 2021 will see some increased activity in hearings and other core areas, the budget plan that I presented offset these costs with reductions in discretionary areas and a staffing freeze, so that annual practice fees are maintained at their current levels.

legal services, advancing Truth and Reconciliation and initiating a conversation about mental health issues in the legal profession. It also calls for greater engagement with the public regarding the justice system and our regulatory processes, and with the profession on a range of issues and initiatives. Early on in the plan, we took steps to renew and strengthen our relationship with the courts, government and government agencies, to consult Indigenous lawyers and organizations, and to develop new communication channels to reach the public and the legal profession.

Our efforts to be more open and to engage with those beyond our doors proved valuable during this current, difficult year. At the outset of the pandemic, the courts turned to the Law Society for guidance on an acceptable process for remote commissioning of affidavits. The Ministry of Attorney General and the Law Society

established regular meetings to come up with solutions for one new issue after another. When lawyers told us about the difficulty they and their clients experienced adhering to health emergency directives when completing real estate transactions, we worked with the Land Title and Survey Authority to implement alternative procedures that could be done remotely. We have been invited to consult with the provincial government on which Covid-19 response measures should continue — or even be enhanced — after the pandemic is over.

Upon hearing from lawyers particularly hard hit by the economic impact of the pandemic, we worked with the Benchers to develop proposals to provide targeted fee relief. Staff also implemented a fee instalment policy aimed at making things a little easier for everyone, and while 2021 will see some increased activity in hearings and other core areas, the budget plan that I presented offset these costs with reductions in discretionary areas and a staffing freeze, so that annual practice fees are maintained at their current levels. Guided by the Benchers, we are reviewing our regulatory processes to address areas where our Rules and BC Code hamper innovation or hinder the ability to provide cost-effective legal services.

Prior to and throughout the pandemic, staff, together with the Law Society's Truth and Reconciliation Advisory Committee, have continued implementation of an action plan that seeks to make progress on a number of fronts. With the challenges of Covid-19, we experienced some delays in the development of our Indigenous intercultural competency training program, but I still expect that we will begin introducing modules in the first part of the new year.

In November, President Ferris, QC and I joined with senior staff from our

Trust Assurance and Professional Conduct teams for two days of testimony before the Cullen Commission of Inquiry. We provided evidence of our rules, our efforts to educate and inform the profession of risks, our powers to investigate and review information that no other agency can access, our track record of enforcing the rules, and our willingness to engage with government and law enforcement entities on enhancing the anti-money laundering regime.

As the Law Society makes the transition from the current strategic plan to the next one, we will continue to be outward-looking. The past three years are a good start, but there is more work that we at the Law Society can do to involve the public, the profession and other justice sector partners and stakeholders in matters that affect them.

As the Benchers consider actions on the plan and recommendations of the Futures report, how to address the challenges of practising law, and further initiatives to get through the pandemic and beyond, the

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Law Society staff and I are committed to listening to, engaging with and hearing from you. We may be reached through the email addresses and telephone numbers posted on our [website](#). ❖

Dean Lawton, QC, 2021 president

WHEN DEAN LAWTON, QC attended the University of Victoria as a member of the law school's third class of students, it was before the university had a dedicated law school building. He and his peers went to classes in different buildings and annexes across the campus.

To hear him describe it, unbeknownst to him at the time, the experience prepared him for the current pandemic. "It was like a virtual law school, before things were virtual," he jokes. But the experience led him to realize how institutions can be defined by their political and social culture, as opposed to just a physical place. "I believe that all of us are products of our culture, our geography, our family history and, with a bit of luck, some good teachers," he added.

One of those good teachers for Dean was the late James Carfra, QC, with whom he co-founded Carfra Lawton LLP in 1985. Dean credits Carfra as a mentor and for inspiring him to run as a Bencher. "He was a person who was always dedicated to community work and engaging lawyers," Dean said. "He said to me that one of the foundational elements of lawyering is an independent bar and, to maintain that, we have to dedicate time and energy to the work of the Law Society."

Dean was first elected a Bencher in 2013, shortly after his mentor passed away in 2012. Asked about changes he has seen over the years since becoming a Bencher, he says, "I have seen a significant shift at the Law Society, particularly with how we are increasingly looking beyond the immediate impact of lawyer regulation to the role lawyers play in our society." He is pleased with the past year's focus on developing data-driven objectives and decisions under the leadership of President Craig Ferris, QC, which he plans to continue in 2021. He also notes the move toward becoming a more outward-looking organization, and he hopes to continue the Law Society's efforts to engage, and collaborate with, the courts and government on some policy initiatives.

Some of the Law Society's immediate priorities for next year include assessing the role of alternate legal service providers



John Yanyshyn / Visions West Photography

in the innovation sandbox, examining the role of articling for new lawyers, as well as the start of its Indigenous intercultural competency course and ongoing work in reconciliation. "For me, there's another element — cultural humility: the ability to reflect on one's own views, to be critical of one's own views, to be tolerant and to be an ongoing learner of other cultures," Dean said. He hopes to bring that lens not only to the work of reconciliation, but also to fostering greater diversity and inclusivity at the Law Society and in the legal profession.

Dean also points out that these broader and ongoing efforts continue against a backdrop of current challenges the Covid-19 pandemic poses for lawyers providing essential services to the public. He has seen how those hit hardest financially often practise in critical areas of family and criminal law. He wants to ensure that the pandemic does not result in fewer lawyers and less access to legal services and is pleased by the Benchers' decision to hold the line on annual practice fees and to offer targeted financial assistance to lawyers facing particular challenges as a result of the pandemic. In addition to financial

pressures, Dean recognizes the need to support lawyers' mental health as an integral part of how the Law Society protects the public. "When lawyers are well," Dean said, "they are best situated to provide the necessary attention and professionalism to their clients and their duty to the public's interest."

To take care of his own health, Dean looked to squash as one of his main ways to stay fit and healthy, until the pandemic required him to shift his attention to bike-riding. He has ridden more than 2,000 kilometres in the past few months. He looks forward to bringing his bike to the False Creek and Stanley Park seawall soon — he's in the midst of a move from Victoria to Vancouver to focus on his duties as president next year.

"In my younger days, I was a member of Scouts Canada, and I had a senior Scouter who used to say to us, 'Whatever pathway you're on, whatever trail you take, make sure you leave your campsite in better condition than when you found it,'" Dean said. "I would like to see what we established at the Law Society be maintained and protected, as well as make things better for those who come after." ♦

Rule of Law Matters podcast

IN SEPTEMBER, THE Law Society launched Rule of Law Matters, a podcast series that draws from real-life, current events that explain the concept of the rule of law, how the rule of law is threatened or undermined and what it all means to the public.

Jon Festinger, QC hosts conversations with special guest speakers, including renowned international human rights lawyer Irwin Cotler, who spoke to the rise of authoritarianism around the globe, former UBC law school dean Dr. Catherine Dauvergne, QC, who discussed the differences between the rule of law versus rule by law, and Law Society President Craig Ferris, QC, who addressed lawyer independence and why it is necessary in a free and democratic society. Future episodes will discuss the Covid-19 pandemic and its effects on the rule of law.

"Increasing public awareness and

understanding of the rule of law and the importance of lawyer independence is crucial to maintaining confidence in the justice system," said Christopher McPherson, QC, chair of the Rule of Law and Lawyer Independence Advisory Committee. "The Rule of Law Matters podcast is an ideal medium to explore this often complex and challenging topic with a wider public audience by engaging in wide-ranging discussions with a diverse group of guests, each of whom brings their unique and interesting viewpoints to this fundamentally important issue."

Since it was launched, the podcast has been downloaded nearly 2,000 times by listeners from Canada, the United States, the United Kingdom, the Netherlands and Hong Kong. Listen to the podcast on our [website](#), or receive the latest episodes when they are released by subscribing to

the Rule of Law Matters podcast on [Spotify](#) or [Apple Podcasts](#). ♦

ICYMI: STATEMENT REGARDING JUDICIAL INDEPENDENCE

The Rule of Law and Lawyer Independence Advisory Committee issued a statement expressing concerns about the mandate letter sent to the federal Minister of Justice following the last election. In particular, the directive nature of the language on the issue of education for judges could be viewed as harmful to the principles of judicial independence. [Read the statement](#).



2020 Law Society Award recipient, Leonard Doust, QC

Leonard Doust, QC is the recipient of the 2020 Law Society Award. Doust has made extraordinary contributions to the legal profession and the administration of justice for more than 50 years. A fearless advocate, a kind and generous mentor to young lawyers, many of whom have become prominent lawyers, judges and justices, and renowned for his pivotal Public Commission on Legal Aid, he embodies the best of the profession and service to the public interest.

The Law Society Award is ordinarily presented at the annual Bench & Bar Dinner, which had to be postponed due to the pandemic. To honour Doust now and celebrate his career and achievements, the Law Society produced a special video presentation in which some of the people who nominated him pay tribute to his contributions. ♦

The Law Society Award is a platter made of hand-turned wood by Rod Smith, a Kwakwaka'wakw sculptor based in Qualicum Beach.



Bencher by-election results



Kevin B. Westell and **Lisa Dumbrell** have been elected as Benchers in the November 16, 2020 by-election for the County of Vancouver.

Westell was called to the bar in 2009 and is currently a founding partner at

Pender Litigation, where he practises criminal, regulatory and administrative law. In addition to his work in criminal defence, Westell acts as ad hoc Crown counsel, amicus curiae, and as counsel for vulnerable witnesses.

He has served as president of the Advocates' Club, chair of the Canadian Bar Association, BC Branch Vancouver Criminal Section, and the Trial Lawyers Association of BC's Criminal Defence Committee, and he has been Vancouver's regional representative for the Criminal Defence Advocacy Society.

Dumbrell was called to the bar in

1998. She is currently counsel for the Public Prosecution Service of Canada (PPSC), where she serves as a federal Crown for the North Shore, Sechelt and Pemberton areas.

She is a member of the PPSC Vancouver Diversity and Inclusion Committee, the Vancouver Criminal Section of the Canadian Bar Association, and the International Society for the Reform of Criminal Law and the Canadian Institute for the Administration of Justice.

For by-election results, see [Bencher election results](#). ♦

Law Society Strategic Plan 2021-2025

THE BENCHERS HAVE adopted a new strategic plan that lays out a mission statement, vision, core values and organizational goals and initiatives that will guide the Law Society over the next five years.

The plan builds upon the progressive and innovative direction that the Law Society has taken to address the disruption of the pandemic and to create a more resilient justice system for British Columbians through a combination of initiatives that the regulator can deliver and goals that can be achieved by working with others.

Over the 2021 to 2025 timeframe, the Law Society will focus on:

- innovative improvement of regulation and education of the legal profession;
- working toward reconciliation with Indigenous peoples in the justice system;
- taking action to improve the availability of affordable legal services and access to justice;
- promoting diversity in the legal profession; and
- increasing public confidence in the Law Society and administration of justice.

These five objectives will be pursued in tandem with work the Law Society is already undertaking, including implementation of previously approved priorities. Law Society committees will provide policy-focused direction regarding these objectives and report annually on progress and concrete steps taken to implement the objectives.

For more information, read the [Strategic Plan 2021-2025](#). ♦

In memoriam

OVER THE PAST few months, the legal profession and public of British Columbia lost some leading members of the bench and bar. Life Bencher Gerald Lecovin, QC served the public of British Columbia for 60 years as a lawyer, supporter and volunteer for various community organizations.

Peter Lloyd, an appointed Bencher and also a Life Bencher, brought his experience as a chartered accountant to the Finance

and Audit and other committees of the Law Society.

Joe Arvay, QC, who served as a Bencher for one term, was a leading constitutional lawyer whose extraordinary contributions to the law and the legal community have made a lasting impact.

Prior to her retirement in 2016, the Honourable Suzanne MacGregor was a successful family law lawyer and Provin-

cial Court judge, where she continued to be successful, respected and known in the legal community.

Finally, former Chief Justice Lance Finch, a giant of the justice system in this province, set an example of civility, hard work and how to conduct ourselves.

All made tremendous contributions to public and the legal profession, and all will be missed. ♦

Innovative solutions to increase access to justice

THE LAW SOCIETY has taken a significant step toward expanding the availability of affordable legal services by opening an innovation sandbox for service providers who do not have to be lawyers or law firms. For decades, survey after survey has shown that a significant percentage of the public is not benefitting from the advice of lawyers for their legal problems. Earlier this year, an Ipsos survey revealed that 85 per cent of British Columbians who have a serious legal problem do not see a lawyer about it.

The Law Society recognizes that there are people who are not authorized to practise law who may be able to help members of the public who will not see a lawyer about their problem. Upon reviewing the results of the survey on legal needs, and considering approaches in

other jurisdictions such as Utah, Washington, Oregon, California, Ontario and Saskatchewan, the Licensed Paralegal Task Force recommended taking a grassroots approach of allowing paralegals and others to propose legal services that they have the education and experience to deliver within an innovation sandbox monitored by the Law Society. The Benchers approved the task force's recommendation at their September 2020 meeting, and staff moved forward with creating and implementing the sandbox.

The Law Society is now accepting proposals from interested individuals, businesses and organizations to enter the sandbox. If accepted into the sandbox, successful applicants will be given the opportunity to demonstrate their proposal

effectively meets the legal needs of British Columbians.

Beyond the sandbox initiative, the Law Society has prioritized innovation in its 2021-2025 strategic plan. The Covid-19 pandemic presented an opportunity for the Law Society to be more agile with its processes and to experiment with change. The next step is to improve upon some of these changes and make them permanent, as well as consider how to use technology to make systems and procedures more user-friendly for both the public and licensees. The goal for the Law Society is to lead as an innovative regulator in both its regulation of legal service providers and its efforts to expand the availability of legal services to the public. ♦

In brief

RULE OF LAW ESSAY CONTEST

The Law Society invites BC grade 12 students and any secondary school students who have taken or are currently enrolled in law 12, political studies 12, social justice 12 or social studies 11 to submit an essay on one of two topics. The topics are:

1. How does civil disobedience impact the rule of law?
2. What role does the rule of law have in advancing reconciliation with Indigenous people?

The Law Society will select one winning essay and one runner-up from the entries it receives overall. (There will not be one winner and runner-up for each topic.) The winning entry will be awarded a \$1,000 prize, and the runner-up will receive \$500.

For further details, see the information sheet and submission guidelines on

our website at [Our Initiatives > Rule of Law and Lawyer Independence > Secondary School Essay Contest](#).

JUDICIAL APPOINTMENTS

The Honourable Peter G. Voith, a judge of the Supreme Court of British Columbia, was appointed a justice of appeal of the Court of Appeal for British Columbia. Mr. Justice Voith replaces Madam Justice B.L. Fisher (Vancouver), who elected to become a supernumerary judge effective January 2, 2020.

Jasmin Ahmad, QC, counsel at Koffman Kalef LLP in Vancouver, was appointed a judge of the Supreme Court of British Columbia. She replaces Mr. Justice J.C. Grauer (Vancouver), who was elevated to the Court of Appeal effective December 18, 2019. Madam Justice Ahmad was a Benchers for Vancouver County from 2017 until

her appointment to the Bench.

Ian Caldwell, Master of the Supreme Court of British Columbia in New Westminster, was appointed a judge of the Supreme Court of British Columbia. Mr. Justice Caldwell replaces Mr. Justice G.T.W. Bowden (Vancouver), who resigned effective October 1, 2019. The Chief Justice requested that the vacancy for Justice Bowden be transferred to New Westminster.

Ardrith Walkem, QC, a lawyer with Cedar and Sage Law Corporation in Chilliwack, was appointed a judge of the Supreme Court of British Columbia. Madam Justice Walkem replaces Madam Justice M. Gropper (Vancouver), who elected to become a supernumerary judge effective April 14, 2020. ♦

Lawyers Indemnity Fund: New look; same expertise, service and results

FOR A HALF-CENTURY, the Law Society of BC has arranged professional liability indemnity coverage for BC lawyers. And since 1986, the Lawyers Indemnity Fund (LIF), formerly the Lawyers Insurance Fund, has been the vehicle providing that coverage, protecting the profession and indirectly the public from the risks associated with the practice of law. Its delivery of underwriting services, risk management and claims handling has earned recognition as a best practice model for lawyers professional liability programs worldwide. While the new year will bring some changes to LIF's structure and branding, what will not change is the top-notch expertise, service and results LIF provides.

Beginning January 1, 2021, LIF will have a new website – www.lif.ca – along with a new call display, new email addresses and a new logo, letterhead and banner for notices and reports. You will also be able to follow @LIFBC on Twitter for the latest information on its programs, risk management tips and videos when it begins tweeting next year. While LIF has always maintained confidentiality over claims information and operated at arm's

length, these changes further enhance the separation of LIF from the conduct and discipline functions of the Law Society and better support LIF's ability to provide lawyers with the information they need to practise claims-free.

Along with the new branding, LIF is in the final stages of a corporate restructuring. In 2020, the program's rules, code,

While the new year will bring some changes to LIF's structure and branding, what will not change is the top-notch expertise, service and results LIF provides.

website, policy wording and all other documents were revised to convert the former insurance program into the current indemnification program. Starting on January 1, 2021, policies to indemnify BC lawyers will be issued by a new not-for-profit subsidiary called the BC Lawyers Indemnity Association (BCLIA), which has assumed the rights and obligations under all previously

issued policies, and the windup of the current indemnitor, LSBC Captive Insurance Company Ltd. (the "captive"), will be complete. Personnel, claims handling, payments and administration of the program will remain virtually the same as they have been for many years.

The amendments to the *Legal Profession Act* proclaimed earlier this year converted the "insurance program" into an "indemnification program." The changes in the legislation mean that the Law Society or a subsidiary, that is not a captive insurer, operating the program is not: an "insurer," as defined in the *Financial Institutions Act* and the *Insurance Act*; carrying on "insurance business"; or regulated by the BC Financial Services Authority, a Crown agency that regulates, among others, financial institutions and insurance companies in the province. To comply with these requirements, BCLIA, which will not be regulated by the BC Financial Services Authority, will become the indemnitor in the new year, and issue all future professional liability policies. ♦

Unauthorized practice of law

THE LAW SOCIETY acts to protect the public against individuals who have not been admitted to the newly created regulatory innovation sandbox and who hold themselves out to be lawyers when they are not, or have provided legal services to the public when they are not authorized to do so.

Between June 23 and November 26, 2020, the Law Society obtained three written commitments from individuals and businesses to cease engaging in the unauthorized practice of law. These individuals and businesses put the public at risk by performing unregulated and uninsured legal services or by misrepresenting

themselves as lawyers. If they break their commitment, the Law Society may obtain a court order against them.

The Law Society also obtained two court orders prohibiting the following individuals and businesses from engaging in the unauthorized practice of law:

- On July 6, 2020, the BC Supreme Court issued a consent order permanently prohibiting **Dennis Pieschel**, of Delta, BC, and his business **D & K Direct Management Services Inc.**, from engaging in the practice of law for a fee.
- On August 28, 2020, the BC Supreme

Court issued a consent order permanently prohibiting **Li Xin Cheng**, aka **Clint Cheng** and **Princemountain Transnational Services Inc.**, of Richmond, BC, from engaging in the practice of law for a fee and from representing themselves as being lawyers, a law firm, a law corporation or any other title that connotes they are entitled to engage in the practice of law. The Law Society was also awarded costs in the amount of \$1,870.33.

To read the orders, search by name in the Law Society's [database of unauthorized practitioners](#). ♦



FROM THE LAW FOUNDATION OF BC

New centre will help transform education in Indigenous law

The Law Foundation is proud to have provided the founding grant for the National Centre for Indigenous Laws

TUCKED AWAY AT the University of Victoria law school, the Indigenous Law Research Unit (ILRU) has built its reputation as the leading centre for Indigenous legal research and public legal education in Canada. In addition, the UVic Faculty of Law launched the first of its kind JID/JD, otherwise known as the Indigenous Law Degree program, offering a dual degree in Canadian and Indigenous law. Both the ILRU and the Indigenous Law Degree program provide opportunities for research and have attracted law students, scholars and researchers from across the country and the world.

Now the program is poised to build on its status as a global centre for Indigenous legal scholarship. A founding grant of \$5 million from the Law Foundation of BC, combined with funding from the provincial and federal governments, will support a dedicated building for the program to stand on its own: the National Centre for Indigenous Laws.

"It really feels like a dream come true,"

said Dr. John Borrows, Canada Research Chair in Indigenous Law at the UVic law school. Borrows helped bring the dual degree program to life and has long envisioned a dedicated program for Indigenous law studies. "It gives me the feeling that this work will continue to live in the minds and hearts of others."

Sitting across from the law school, the National Centre for Indigenous Laws will house the dual degree program, as well as the ILRU. It will serve as a space for legal scholars from across Canada and the world to convene, and it will be a venue for public education.

The layout and design of the building will be informed by consultation with Indigenous community members and stakeholders, to meet the needs of local and visiting nations alike. Part of the design will honour the Big House, a traditional governance and community meeting space central to several West Coast Nations.

Dr. Val Napoleon, Law Foundation

Chair of Indigenous Justice and Governance, and director of the ILRU, envisions the space as a "reconceptualization" of the law school, where Indigenous people can feel that they belong and can come together to discuss and debate important issues.

Napoleon also hopes the new centre will provide space and resources to meet the "tremendous appetite" from those in

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the legal profession for education in Indigenous law. Understanding the legal traditions of the many Indigenous Nations across Canada has never been more essential for legal practitioners—especially after the Truth and Reconciliation Commission's call to action for more education around Indigenous laws.

"A limited understanding of Indigenous law means you have a very limited understanding of the major issues that people are grappling with now," said Napoleon. ♦

For more information about this and other initiatives funded by the Law Foundation, read the Foundation's newly released [Annual Report](#).



Dr. Val Napoleon, Law Foundation Chair of Indigenous Justice and Governance

Law Society gold medals



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

In 2020, gold medals were presented to, from left to right, Lauren Frederick of UVic, Paul Sun Yoo Jon of UBC and Heather Maki of TRU. ❖

Fee Mediation Program offers free mediation to manage fee disputes

Lawyers with mediation experience needed to fill volunteer roster of qualified mediators

THE LAW SOCIETY'S Fee Mediation Program is an alternative to the assessment of a lawyer's account by a registrar of the Supreme Court.

The program relies on a roster of qualified mediators, and the Law Society is currently seeking lawyers who are interested in volunteering to be a part of this important program.

Complaints about fees are one of the more common inquiries received by the Law Society. While the Law Society does not have jurisdiction to order a lawyer to reduce or refund legal fees, the Fee Mediation Program is a way to meet the needs of complainants who would otherwise be turned away.

The program is voluntary and non-

binding. Either a lawyer or a client can request mediation by submitting an application to the Law Society. If both the lawyer and the client agree to the process, the Society appoints an independent, neutral mediator from its roster.

The range of amounts that can be mediated is a minimum of \$1,000 and a maximum of \$25,000.

The program is free for participants, and up to three hours of mediation time is provided, in person or by telephone. Mediators are currently compensated with a stipend of \$400 plus reasonable expenses, which is funded by the Law Society.

In 2019, approximately 85 per cent of the fee mediations that were completed resulted in successful resolution. To ensure

the program remains available to anyone who requests it, the Law Society is currently recruiting mediators throughout BC. To be a mediator in the program, lawyers must meet the following qualifications:

- be a member on one of the Mediate BC Rosters; and
- have a minimum of five years' related experience.

If you have questions or would like to be considered for the roster of volunteer mediators, please contact Lynne Knights at lknight@lsbc.org. Applicants should send an expression of interest including a summary of their experience with mediation. ❖

Law Society adopts the Futures Task Force's timely recommendations for change

AT THE BEGINNING of 2020, the Futures Task Force began its review of the current marketplace for legal services and what changes to regulation and the delivery of services may be needed to take advantage of innovation and avoid disruption. Within a couple of months, a state of emergency was declared, and significant changes to how law is practised were adopted in response to the pandemic. Centuries-old procedures were adapted to make it possible to commission affidavits virtually. Significant work was done to enable the courts to restore operations. Old orthodoxies were scrutinized as part of an effort to keep the system running for British Columbians, whose need to access justice did not stop because of the health emergency.

The Futures Task Force was created out of a recognition that the future is coming, whether we like it or not, and change is often required to be ready for it. With the task force, the Benchers also recognized the importance of distinguishing between what is fundamental and what may *seem* fundamental. As President Craig Ferris, QC said in his first report to the Benchers after the state of emergency was declared in April, "We need to separate principle — the things that we believe in — from practice, which is the way that we do things. Principles are important."

With a broad mandate to review regulation and the practice of law, the public need for legal services and how

innovative technologies have improved other service-based industries, and after engaging the legal profession to learn more about its challenges and needs, the task force presented its report to the Benchers in September. The [final report](#) was adopted unanimously and makes 23 recommendations for change in regulation and modernization.

Among the recommendations are to embrace and improve positive changes implemented in response to COVID-19, to amend regulatory structures to allow innovation and alternative business structures, to improve resources for in-house and government lawyers, to update legal education and accreditation and to ensure current and future regulation reflects Indigenous and diverse perspectives.

The top recommendation calls upon the Benchers to recognize where changes are possible and to be prepared to advance bold and innovative approaches to how law is practised and regulated, in order to address items listed in its mandate under section 3 of the *Legal Profession Act*. President Ferris commented on the recommendation by saying that this approach, while widely embraced by business owners in other sectors, often encounters resistance from a legal profession whose collective personality is to hunt for the negative in pursuit of client interests, is highly autonomous and is more likely to focus on threats than opportunities.

Many of the task force's recommendations have found their way into Strategic Plan 2021-2025, and the Benchers approved implementing the call for developing a regulatory innovation sandbox now. The [innovation sandbox](#) aims to improve things for what a [2020 Ipsos survey](#) reports is 85 per cent of British Columbians who experience a serious, difficult legal problem and either get no legal help or get legal assistance from someone other than a lawyer. The regulatory innovation sandbox enables some non-traditional service providers to offer a defined scope of legal services to individuals whose needs are currently unmet or underserved, as well as innovation in business structures and partnerships between lawyers and those who are not lawyers. Successful applicants will be required to obtain a no action letter from the Law Society. The task force envisions the innovation sandbox will enable piloting a licensed paralegal regime. Read the full report [here](#).

To support the development of this initiative, the Benchers also approved a public policy statement regarding unauthorized practice, which clarifies that "the Law Society will not take action against persons who are apparently acting contrary to section 15 of the *Legal Profession Act* unless, in the discretion of the executive director, there is a significant risk of harm to a person or the public." ♦

Celebrating milestone anniversaries in the profession

EACH YEAR THE Law Society honours long-standing members of the profession through the presentation of 50, 60 and 70-year certificates.

For 2020, the Law Society created a special [video presentation](#) to celebrate the recipients, as the usual celebration event had to be postponed in light of the COVID-19 pandemic.

The following lawyers celebrated 50 years in the profession in 2020: Ralston S. Alexander, QC, Joel M. Altman, Gary M.

Begg, David A.G. Birnie, QC, Allan E. Black, QC, Joseph A. Boskovich, James J. Camp, QC, Arthur L. Close, QC, Thomas E. Dinsley, Michael J. Edwards, H. Del Feller, J. Gary Fitzpatrick, QC, Ronald G. Fox, Ronald K. Gutkin, John E. Helsing, William M.B. Holburn, QC, James C. Hutchinson, William E. Ireland, QC, Morley A. Levitt, Terrence R. Loptson, J. Keith Lowes, Rosemarie Lutter, Michael H. Moscovich, David H. Norton, John W. Norton, Carol J. Powlett Pepper, Andrew A. Purdy, D. Peter Ramsay, QC,

Anthony P. Serka, QC, Michael F. Smith, Peter W. Stanley, Sandra D. Sutherland, QC, D.G. Duff Waddell and Philip B. Webber.

These lawyers celebrated 60 years in the profession: A. Gordon Armstrong, QC, John G. Cochrane, J. Gavin Connell, QC, Boris W.F. Fodchuk, John N. Laxton, QC, William E. Loughheed, William B. McAllister, QC, John B. Molson and H. Keith Siddall.

Melvin D. Easton celebrated 70 years in the profession. ♦

Client identification and verification – addressing your questions

HOW ARE YOU doing with the client ID and verification rule changes?

January 1, 2021 marks the one-year anniversary of significant amendments to Part 3, Division 11 – Client Identification and Verification, Law Society Rules 3-98 to 3-110. As well, new Rule 3-58.1 (Trust account only for legal services) and the changes to Rule 3-59 (Cash transactions) in Division 7 will have been in effect for about one and a half years. These rules, based on the Federation of Law Societies' model rules, are part of the Law Society's ongoing commitment to combat money laundering and terrorist financing.

Over the past year, practice advisors have been answering questions about the Division 11 rules and other areas, and trust auditors have been answering trust and cash questions. In this article, I will focus on five specific topics relevant to anti-money laundering (AML) that have come up:

- Clients who are lawyers or law firms (including acting as agent)
- Client referrals from other lawyers
- Acting for a developer
- Dealing in virtual currencies – red flag indicators
- Video technology verification of identity services

CLIENTS WHO ARE LAWYERS OR LAW FIRMS (INCLUDING ACTING AS AN AGENT)

I am sometimes asked whether the Division 11 rules apply to clients that are lawyers or law firms. The answer is — yes.

If you act for a client who is a lawyer or a law firm, client identification and verification rules apply the same as when you are retained to provide legal services to any individual or "organization" (as defined in Rule 3-98). Lawyers and law firms have no special status as clients. Your responsibilities to identify and verify a client's identity may be fulfilled by you or your firm, including members or employees of your firm

(wherever they may be located), or you may use an agent for that purpose. However, *you* remain responsible for meeting the requirements. Remember that if your client is a law firm, you must also identify and verify the identity of the individual instructing you on behalf of the firm.

Common situations where you may act for another lawyer may be in respect of their personal purchase or sale of real estate or to make a will. However, a lawyer or law firm may also wish to retain you to be their agent in the course of providing legal services to one of their clients. For example, let us say a lawyer in Kamloops (not a member of your firm) acts for a client in respect of a financial transaction and the Kamloops lawyer asks you to attend an appointment in Victoria regarding the transaction because she is unavailable on the scheduled date. The lawyer tells you that she has identified and verified her client's identity and obtained information about the source of money for the transaction.

In this situation, it is clear that the Kamloops lawyer for whom you act as agent is your client. But, in addition, that lawyer's client is also your "client" (as defined in Rule 3-98). What are your Division 11 obligations with respect to the other lawyer's client? If another BC lawyer or an "interjurisdictional lawyer" (a member of a governing body who is authorized to practise law in another Canadian jurisdiction) has complied with Rules 3-100 to 3-106 or the equivalent provisions of another Canadian jurisdiction, and has retained the information and documents, you do not have to identify and verify the client's identity again when acting in respect of a financial transaction *unless you have reason to believe that the information, or its accuracy, has changed* (Rules 3-99(2.1)(a), 3-100(2), 3-105(2) and 3-106(2)).

You should obtain confirmation from the other BC lawyer or interjurisdictional lawyer that satisfies you that she has complied with the rule requirements vis-à-vis with her client. In addition, obtain copies

of the information and documents (Rule 3-107). If you cannot obtain copies, then identify and verify the client's identity in accordance with the rules.

What are your obligations if you act as an agent for a foreign lawyer? You will need to apply the client identification and verification rules to the foreign lawyer and to that lawyer's client. For example, if you act for a Seattle lawyer representing a Seattle individual in respect of a financial transaction, you will need to enter into an agreement or arrangement in writing with an agent to verify the clients' identities. Depending on the circumstances, you might decide to use one person for both processes or have two agents. See the FAQs for "Using an agent to verify a client's identity" on the Client ID & Verification web page and the sample agent agreement in the client identification and verification checklist.

CLIENT REFERRALS FROM OTHER LAWYERS

If a potential new client tells you that she was referred to you by a lawyer outside of your firm, do not let your guard down. It may not be a genuine referral, or, if another lawyer did make the referral, it should not be taken as an endorsement of the potential client's character. Sometimes fraudsters use a referral as a ruse, hoping to take in an unsuspecting lawyer. If you intend to act for the client, consider asking for consent to speak to the referring lawyer. Not only does this allow you to thank the lawyer for the referral, but you may also learn more about the circumstances of the referral. Assuming a referral is genuine, below is some guidance about the application of the client identification and verification rules.

I sometimes get asked: "If the referring lawyer previously identified and verified the client's identity, do I have to take the same steps again?" If another BC lawyer or an interjurisdictional lawyer has complied with Rules 3-100 to 3-106 or



the equivalent provisions of another Canadian jurisdiction, and they have retained the information and documents, you do not have to identify and verify the client's identity again when acting in respect of a financial transaction unless you have reason to believe that the information, or its accuracy, has changed (Rules 3-99(2.1)(b), 3-100(2), 3-105(2) and 3-106(2)).

Obtain confirmation from the referring lawyer to satisfy yourself that there was prior compliance with the rule requirements. You should obtain copies of the information and documents from the referring lawyer (Rule 3-107). If you cannot obtain copies, then you should identify and verify the client's identity in accordance with the rules.

Also, keep in mind that if you act for an organization and the instructing individual changes, you must identify the new instructing individual and verify that individual's identity if there is a financial transaction. Also note that Rule 3-110 (Monitoring) applies.

ACTING FOR A DEVELOPER

If you are a solicitor who has acted for a developer client from the early stages of the

development, you will have identified and verified the developer's identity and obtained information about the developer's source of money in respect of the financial transactions for which you have provided legal services. You may now be engaged in monitoring your professional business relationship (Rule 3-110) and starting to act on specific sale transactions. This has led to some lawyers asking me about their Division 11 obligations with respect to the purchasers of the strata units in the development in this context.

If you act for the developer, the purchaser of a strata unit is not your "client" (as defined in Rule 3-98) in the context of Division 11. You have no general obligation under Rule 3-102 to verify the purchaser's identity or to ask the purchaser questions about their source of money for the deposit and conveyance. However, if there is something suspicious about your client, the purchaser or the transaction, you should increase your level of inquiry until you are comfortable with receiving the money and acting on the transaction or, if that is not possible, decline to act. Record the results of your inquiries (see *BC Code* rules 3.2-7 to 3.2-8 and 3.7-7, Rule

3-109 and the "Source of money" FAQs). [Risk Assessment Case Studies for the Legal Profession](#) (February 2020) and [Risk Advisories for the Legal Profession](#) (December 2019) both provide guidance and examples regarding red flags in real estate transactions.

Before accepting the purchaser's deposit in trust, you should have a copy of the signed contract of purchase and sale for the strata unit. Consider that if the sale transaction does not complete and the money must be returned to the purchaser, you will need sufficient information about the purchaser to return the deposit to the correct person. If the contract of purchase and sale does not contain sufficient information, you may be in a position to get more details directly from the purchaser at the time of the proposed deposit, or from your developer client or its real estate broker or sales representative.

Keep in mind that although lawyers do not have reporting obligations to the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC), your developer client may have obligations under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* and its Regulations.

Services for lawyers

Law Society Practice Advisors

Barbara Buchanan, QC
Brian Evans
Claire Marchant
Edith Szilagyi

Practice advisors assist BC lawyers seeking help with:

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

Tel: 604.669.2533 or 1.800.903.5300

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



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

Tel: 1.888.307.0590



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

Tel: 604.685.2171 or 1.888.685.2171



Equity Ombudsperson – Confidential assistance with the resolution of harassment and discrimination concerns of lawyers, articulated students, law students and support staff of legal employers.

Contact Equity Ombudsperson **Claire Marchant** at 604.605.5303 or equity@lsbc.org.

This includes keeping records for certain financial transactions, for client verification and to fulfill other detailed requirements — including reporting — to FINTRAC, all of which are aimed at preventing money laundering and terrorist financing. It would be prudent to know if your client is aware of the requirements. Also, if the purchaser’s deposit was provided through a real estate broker and sales representative acting as an agent for the purchase and sale of real estate, registered and licensed to do so by the province, these professionals also have obligations under the Act. FINTRAC provides guidance for real estate developers, brokers and sales representatives on its [website](#).

DEALING IN VIRTUAL CURRENCIES – RED FLAG INDICATORS

Virtual currency is an evolving global product, and virtual currency service providers have often been referred to as operating in the “Wild West.” You may be familiar with the terms cryptocurrency, digital currency and electronic currency, but “virtual currency” is the term now used in federal legislation. Cryptocurrency risks, and clients wanting to pay for legal services with cryptocurrency, were covered in a previous column (see *Rule amendments enhance Law Society’s anti-money laundering measures*, Fall 2019 *Benchers’ Bulletin*, pp. 14-17). Although this sector is relatively nascent in Canada, it is becoming more regulated. Lawyers who are not steeped in knowledge and experience in this sector could easily get themselves in trouble without careful examination of various legal requirements and red flags.

Recently, the Financial Action Task Force released a report called *Virtual Assets: Red Flag Indicators of Money Laundering and Terrorist Financing* (September 2020). If you are engaging with dealers of virtual currencies and related services, be aware of the red flag indicators. As the report mentions, a single red flag does not necessarily indicate criminal activity. However, the presence of multiple indicators without a logical explanation should raise suspicion and encourage you to conduct further due diligence.

The red flag indicators are organized into the following sections, with each section including illustrative case studies of indicators related to:

- transactions (e.g., making multiple high-value transactions);
- transaction patterns (e.g., incoming transactions from many unrelated wallets in relatively small amounts with subsequent transfer to another wallet or full exchange for fiat currency);
- anonymity (e.g., using virtual currency ATMs despite the higher transaction fees);
- source of funds or wealth (e.g., virtual currency transactions originating from or destined to online gambling services);
- geographic risks (e.g., funds originate from, or are sent to, a virtual currency exchange that is not registered in the jurisdiction where either the person or the exchange is located).

Federal regulations for virtual currencies were introduced to Canada’s *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* and are effective in stages. In the regulations, virtual currency means:

- a digital representation of value that can be used for payment or investment purposes that is not a fiat currency and that can be readily exchanged for funds or for another virtual currency that can be readily exchanged for funds; or
- a private key of a cryptographic system that enables a person or entity to have access to a digital representation of value referred to in paragraph (a). (*monnaie virtuelle*)

Dealers in virtual currencies are deemed money service businesses (MSBs) and must register with FINTRAC. They must comply with client identification and verification requirements, submit suspicious transaction reports and terrorist property reports, keep records and have a compliance program. This includes MSBs based in Canada and those based in foreign jurisdictions that provide services to Canadians. In June 2021, more regulatory obligations will come into effect that include reporting the receipt of virtual currency valued at \$10,000 or more. This will apply to dealers in virtual currency and any reporting entity. FINTRAC provides guidance for MSBs on its [website](#). Dealing in virtual currency includes both virtual currency exchange and virtual currency transfer services.

The Cullen Commission of Inquiry into Money Laundering in British Columbia has included cryptocurrency within its scope of inquiry into the extent, growth, evolution and methods of money laundering in the province. The commission is scheduled to submit a final report to the province in May 2021.

VIDEO TECHNOLOGY VERIFICATION OF IDENTITY SERVICES

Video technology verification of identity services are increasingly being offered by various providers. For example, the BC Land Title and Survey Authority is offering an [online identity verification service](#) to mitigate fraud risk where a physical meeting with an individual is not possible. Lawyers are still expected to comply with the existing rules in Part 3, Division 11 – Client Identification and Verification. Lawyers may nevertheless wish to use technology verification services to enhance their practices. Lawyers will need their client's consent and will be expected to undertake due diligence with respect to engaging a service provider.

The Law Society previously issued

guidance for using video technology for verification in unique circumstances for clients in Canada where a lawyer is unable to use any other verification method. Among other requirements, the guidance provides that lawyers are expected to document the efforts made to verify the client's identity in accordance with the existing rules, and the reasons why they are unable to verify the client's identity in accordance with the existing rules. In such circumstances, the transaction is supposed to be treated as high risk. Please see [Knowing your client – Guidance and rules during Covid-19](#) for the Law Society's Notice to the Profession and detailed guidance as well as [video conferencing technology information](#). Also see the [December 1, 2020 Notice to the Profession](#).

FOR MORE INFORMATION

For more resources, see the [Client ID & Verification](#) web page. In particular, note the AML webinars (free of charge and eligible for CPD credit), the FAQs, the Client Identification and Verification Checklist, several *Benchers' Bulletin* advice articles, Discipline Advisories, Risk Assessment Case Studies and Risk Advisories. Since

we're still in the pandemic, be sure to read [Knowing your client – Guidance and rules during Covid-19](#) in the Summer 2020 *Benchers' Bulletin* (pp. 18-21).

While a checklist is not a substitute for professional judgment, the updated [Client Identification and Verification Checklist](#) (includes a sample agreement with an agent), can assist you with understanding and complying with Division 11. It also highlights *BC Code* rules and other important information relevant to anti-money laundering. The checklist is available as a PDF and as a downloadable Word document, so you can customize it for your practice.

If you have questions about this article, client identification and verification, anti-money laundering, or you wish to discuss a possible scam, you are welcome to contact me at bbuchanan@lsbc.org or 604.697.5816. For more resources, see [Client ID & Verification](#) and [Anti-Money Laundering](#). Please contact an auditor for trust account and general account questions at trustaccounting@lsbc.org or 604.697.5810. ♦

President's View ... from page 2

We need to be sceptical of facts, look for fault and question what could go wrong. This negative mindset helps us to be good lawyers, but it can prevent us as business owners from moving forward in times of change."

Chief Justice Robert Bauman discusses the Futures report in his most recent blog for the Access to Justice BC initiative. He is in lockstep with the Law Society moving ahead with our new initiatives to address the access to justice gap in our society. He uses words like "ambitious," "far-sighted" and "transformative change" to describe our move to explore emerging technologies, the amendment of regulatory structures to allow innovation in legal service delivery and alternative business structures and the creation of a regulatory sandbox for innovation pilots in a controlled environment.

Today, the sad reality is that most British Columbians do not have access to legal services that they need or, frankly, that they deserve. Addressing this problem has been described as an ethical duty of lawyers. I like to think of it more simply as just the right thing to do.

To address these unmet needs, the Law Society and the profession need to change our mindset. We need to be willing to embrace outcomes that are risky or less certain. We need to accept that some of the changes we try may fail. We should accept that we may be embarrassed. None of that means that we should not try or that we should not be bold. Our ultimate goal of improving access to justice for more people is too important.

As the clock ticks down on my term, I would like to acknowledge and thank the Benchers. We transitioned to Zoom meetings in March, and what followed were the longest meetings that we have had in my

term as a Bencher. I thank the Benchers for putting up with me, and for their service, patience and humour.

In January, Dean Lawton, QC begins his term as president for 2021. He will be supported by Lisa Hamilton, QC as first vice-president and Christopher McPherson, QC as second vice-president. Their support of me, along with the rest of the Executive Committee, has been unwavering, and I thank them for it. Thank you, as well, to my friend Don Avison, QC, our CEO, for his wise and thoughtful counsel. We have developed a practice of an endless string of short, urgent telephone calls and crisis management meetings that I will miss greatly. I would also like to thank him for exceptional leadership of the talented staff of the Law Society. Our people are world-class. The Law Society has the right people to bring the change required for all British Columbians. ♦

Conduct reviews

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

A conduct review is a confidential meeting between a lawyer against whom a complaint has been made and a conduct review subcommittee composed of at least one Benchers and one other senior lawyer. Conduct reviews are ordered by the Discipline Committee to address conduct that led to the complaint with a focus on professional education and competence. After the conduct review, the subcommittee provides a written report to the Discipline Committee, which may then direct that no further action be taken, that a citation be issued, that the conduct review be rescinded in favour of an alternative disciplinary outcome, or that the lawyer be referred to the Practice Standards Committee.

NO CASH RULE

While acting for a financial institution in relation to a collection matter, a lawyer allowed his firm to accept six cash payments totalling \$9,840 by remote deposit into the firm's trust account from the debtor. Of the \$9,840 received in cash, \$1,184.70 was applied toward legal fees, with the balance applied to the mortgage debt rather than being returned to the debtor in cash, contrary to Law Society Rule 3-59(1) and (3). The lawyer was not aware that the rule applied to cash deposited into his account at a financial institution, and he has since worked with the Trust Assurance department to properly receipt remote deposits in duplicate. He now has a policy of not accepting cash payments and returning any made remotely, and he has advised members of his firm accordingly. (CR 2020-18)

A different lawyer accepted \$16,000 in cash from a client for a retainer and issued a refund by way of trust cheque instead of cash, contrary to Law Society Rule 3-59(5). When the client changed counsel, the lawyer issued an invoice for \$14,247.59 paid from trust, then issued a refund of \$1,752.41 to the client by a trust cheque. The lawyer acknowledged that she erred by issuing a trust cheque refund on a cash retainer greater than \$7,500, and that she acted in haste to accommodate her client. Her breach of the rule was considered to be careless, rather than intentional. The lawyer has implemented new cash handling procedures in the firm, including refunding outstanding balances only when the bookkeeper is on site, ensuring the client's trust balance is reviewed in the trust ledger rather than in a summary and posting a cash handling procedure chart at each workstation. The firm has also adopted a no-cash retainer policy. (CR 2020-19)

Another lawyer issued a trust cheque for a refund of \$2,500 to a client of her law firm, out of a \$10,760.00 cash retainer, contrary to Law Society Rule 3-59(5). An associate of the firm had conduct of the file but was in court when the client contacted the associate's assistant

with an urgent request that the balance of retainer funds be returned to him. The firm's bookkeeper confirmed there were funds remaining in trust and prepared a cheque for \$2,500. The lawyer had signing authority and signed the cheque without confirming if the retainer had been paid in cash. She did not speak with the associate or review the client trust ledger, the file or any other documents. A month later, the lawyer and the firm's managing partner reported the breach to the Law Society. The lawyer and firm no longer accept cash retainers. (CR 2020-20)

CONFLICTS / CONFIDENTIALITY OF LAW SOCIETY COMPLAINTS / INCIVILITY

A lawyer was retained by a client who was one of three children appointed as attorneys under their father's power of attorney. The lawyer did not meet with or take instructions from the father, believing the father did not have capacity to give instructions. The lawyer was in a conflict of interest when he provided legal advice to and took instructions from only one of the attorneys over the others, contrary to section 3.4 of the *Code of Professional Conduct for British Columbia*. The lawyer admitted he should have met with the father personally and will do so in the future when it is required to determine mental capacity.

In addition, the lawyer informed others about Law Society complaints and disclosed records that formed part of the investigations without obtaining the prior consent of the executive director or the complainant, contrary to Law Society Rule 3-3(1) and section 87 of the *Legal Profession Act*. Throughout the investigation, the lawyer communicated in an uncivil manner and displayed a lack of respect for the Law Society's staff and processes, contrary to rules 7.1-1, 7.2-1 and 7.2-4 of the *BC Code*. The lawyer admitted that he was very busy at the time and that dealing with the complaint had made him angry. He stated that it was not his practice to denigrate the Law Society and, upon reflection, that his conduct was inappropriate. He met with a conduct review subcommittee and committed to changing his practice, including using written retainer agreements and identifying who his client is at the outset of a retainer, calling a Benchers for advice when unsure about his ethical obligations, and meeting personally with clients who have diminished capacity to determine what decisions they are mentally capable of making. (CR 2020-21)

CLIENT IDENTIFICATION AND VERIFICATION

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

A lawyer failed to verify a client's identity in a non-face-to-face transaction with a client not present in Canada, as required by Law Society Rules 3-102 and 3-104. The client was referred by another lawyer at the firm. The lawyer and client exchanged correspondence and spoke

on the phone, and the lawyer advised that he required a copy of two pieces of identification, including a photo, but then neglected to verify the client's identity and failed to follow the CIV rules. The lawyer told a conduct review subcommittee that, as a litigation lawyer, he rarely acts for clients in financial transactions. He understood his obligation regarding CIV but failed to take the proper steps to verify his client's identity. The lawyer has created and implemented a CIV checklist for his firm. He has taken a webinar on the CIV rules and has held firm meetings to reinforce their importance. (CR 2020-22)

A different lawyer failed to verify the identity of his clients in three files involving non-face-to-face real estate matters, contrary to Law Society Rules 3-102(1), 3-104 and 3-107(1). On one file, two purchasers lived in different communities in Canada. The lawyer met with only one purchaser, whose identity he verified, but he did not meet with or verify the identity of the second purchaser. On the two other files, the lawyer failed to enter into agency agreements with the notaries for verification of the sellers' identities. The lawyer told a conduct review subcommittee that he was not aware of the requirement to enter into an agency agreement for clients who reside outside of Canada. The lawyer's firm has now imposed a commercial e-conveyancing system that generates CIV documents as part of its suite of standard conveyancing forms and has trained staff on the system. The lawyer has taken the Law Society's accounting and anti-money laundering courses. (CR 2020-23)

Another lawyer failed to comply with CIV rules in three real estate matters, as required by Law Society Rule 3-104(5) and (6). The lawyer explained that he believed the lawyer or notaries involved had complied with the rules, but he admitted he did not have a clear understanding of the non-face-to-face transaction rule, including the requirement for attestation. He took responsibility and cooperated fully with the investigation. The lawyer has put in place a new system of identification and checklists at the office and has educated his staff. (CR 2020-24)

Yet another lawyer failed to verify the identity of her out-of-province client when she did not obtain an attestation from a commissioner or guarantor, as required in Law Society Rule 3-104. She attributed the oversight to several unusual aspects of the file: the out-of-province client was not the original client and had been brought into the matter by a sibling, and the lawyer anticipated the case would involve litigation necessitating a face-to-face meeting in the future. The lawyer has since moved to a larger firm that has systems and procedures in place to ensure compliance with the rules. She has also reviewed the CIV rules, *Benchers' Bulletins* and the Client Identification and Verification Checklist, and has taken the Law Society's online course. (CR 2020-25)

Finally, a lawyer failed to verify his out-of-country client's identity through an agent, as required by Law Society Rules 3-102 and 3-104. While the lawyer had obtained copies of identification documents from the client, he overlooked that the identity had not been verified through an agent. The lawyer has updated his file opening systems

to ensure that the identity of a client who is not physically present is always properly verified by an agent. (CR 2020-26)

FACILITATING OR COUNSELLING A CLIENT TO BREACH A COURT ORDER

While representing the husband in a family law action, a lawyer facilitated a breach of an asset restraining order by his client and failed to deposit two bank drafts into his trust account as soon as practicable, contrary to rules 2.1-1(a) and 2.2-1 of the *Code of Professional Conduct for British Columbia* and Law Society Rule 3-58, respectively. In anticipation of a finalized settlement, the client had signed several authorizations, including one to permit his bank to send a bank draft of the balance of the client's accounts to the lawyer. Several days later, the settlement collapsed. Meanwhile, the bank had sent two bank drafts to the lawyer. The lawyer understood that, absent a filed order replacing or vacating the existing asset restraining order, he ought to have obtained written consent from opposing counsel to access the funds in his client's bank accounts before requesting that the bank issue the bank drafts. He acknowledged that he should have turned his mind more fully to the proper handling of the two bank drafts once the settlement fell through instead of holding onto them until a settlement was reached. The lawyer was reminded that he can seek advice from practice advisors or elected Benchers. (CR 2020-27)

BREACH OF TRUST CONDITION

While acting for a buyer in a residential real estate conveyance, a lawyer released a deficiency holdback held in trust without ensuring the trust conditions were satisfied, contrary to rule 7.2-11 of the *Code of Professional Conduct for British Columbia*. Upon request from the seller's notary, the lawyer released a builder's lien holdback and deficiencies holdback to the notary without confirming with her client that the deficiencies had been rectified. The error came to light six months later when the seller's new notary asked for the deficiency holdback to be released. The lawyer self-reported the trust shortage of \$11,000 to the Law Society. The lawyer notified the client of the error, learned that only one deficiency remained outstanding and deposited \$1,000 into trust to the credit of the client to cover the remaining deficiency. The lawyer recognized that she should have reviewed the statement of adjustments and printed it as part of the trust release package to ensure trust conditions were satisfied before releasing the funds. (CR 2020-28)

DISCLOSING JURICERT PASSWORD

A compliance audit revealed that a lawyer disclosed his Juricert password to his legal assistant and permitted her to affix his digital signature on documentation for e-filing with the Land Title Office, including property transfer tax returns where the funds were paid out of his trust account, contrary to his Juricert Agreement, Part 10.1 of the *Land Title Act*, Law Society Rule 3-64.1 (then Rules 3-64(8)(b) and

continued on page 21

Discipline digest

BELOW ARE SUMMARIES with respect to:

- Daniel Bruce Geller
- James Roger Webber, QC
- Glenn Arthur Laughlin
- Amarjit Singh Dhindsa
- Mark Alan Hopkinson

For the full text of discipline decisions, visit [Hearing Schedules and Decisions](#) on the Law Society website.

DANIEL BRUCE GELLER

West Vancouver, BC

Called to the bar: May 15, 1974

Retired membership: December 31, 2019

Written submissions: May 7 and July 27, 2020

President's designate: Dean Lawton, QC

Decisions issued: May 28 (2020 LSBC 22) and August 11, 2020 (2020 LSBC 37)

Counsel: Mandana Namazi for the Law Society; no one appearing on behalf of Daniel Bruce Geller

BACKGROUND

Daniel Bruce Geller was found by a hearing panel to have held himself out as counsel for an individual in Yukon when he was suspended by the Law Society of Yukon from practising law in that jurisdiction. The panel found that Geller committed a breach of the Law Society Rules but that his conduct fell short of that required to support a finding of professional misconduct. The hearing panel ordered a fine of \$5,000 and costs of \$10,335 (2018 LSBC 40; 2019 LSBC 35; Winter 2019 Discipline digest).

Geller applied for a review of the decision on facts and determination and the decision on disciplinary action. He also applied for an extension of time to pay the fine, which was granted.

After six months passed, the Law Society emailed Geller to ask if he intended to proceed with the review, as he had terminated his practice and retired from the practice of law. He did not respond.

APPLICATIONS TO DISMISS THE REVIEW

The Law Society applied to dismiss the review. The president's designate expressed concern that the email sent to Geller did not explicitly state the Law Society intended to apply for an order dismissing the review and, therefore, did not constitute the required notice under the rules. The president's designate adjourned the Law Society's application generally with leave to bring it any time 14 days after Geller had been given notice in writing.

The Law Society brought a renewed application to dismiss the review by reason of its being inactive. Notice of the application was delivered to Geller at his email and mailing addresses. He did not respond to the Law Society. By then, he had had nine months to proceed with the review and had not provided any explanation for why he had not advanced the review.

The president's designate dismissed the review.

JAMES ROGER WEBBER, QC

Kamloops, BC

Called to the bar: May 12, 1967

Written materials: July 28, 2020

Panel: Steven McKoen, QC, chair, Eric V. Gottardi and Karen Kesteloo

Decision issued: September 3, 2020 (2020 LSBC 42)

Counsel: Ilana Teicher for the Law Society; James Roger Webber, QC appearing on his own behalf

FACTS

James Roger Webber practises via a sole proprietorship law firm registered in his name. He practises primarily in the areas of real estate, wills and estates and some civil solicitor's work and litigation. He failed to pay his government remittances in full and on time in 2017 and 2018. The total amount of arrears was approximately \$142,870.30, consisting of \$10,870.30 for GST and \$132,000 for payroll source deductions.

Webber moved to a new office location in 2017 and had a low volume of business that year. He self-reported in his 2017 trust report that his law firm did not pay GST and payroll source deductions in full and on time due to a cash shortage and that payments would be made current after collecting overdue accounts and completing a large file.

He again self-reported in his 2018 trust report that the law firm did not pay GST and employee payroll source deductions in full and on time. There were insufficient funds in the firm's general account to meet all financial obligations.

The GST arrears were paid in full as of May 2019. As of June 30, 2020, approximately \$98,000 remained outstanding from unremitted payroll source deductions. He acknowledged he was aware of the arrears and that he used the GST and payroll source deductions to pay other financial obligations of his firm.

ADMISSION AND DETERMINATION

Webber admitted his conduct constituted professional misconduct. The panel accepted his admission.

DISCIPLINARY ACTION

The Law Society and Webber jointly proposed the disciplinary action of a fine of \$9,000 and costs of \$1,000. In determining the disciplinary

action, the panel considered sanctions in other cases, Webber's 50 years of experience practising law and his acknowledgement of the misconduct.

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

1. a fine of \$9,000; and
2. costs of \$1,000.

GLENN ARTHUR LAUGHLIN

Port Coquitlam, BC

Called to the bar: May 17, 1996

Written submissions: April 9 and 28, June 3 and 5, 2020

Review board: Michelle D. Stanford, QC, chair, Catherine Chow, Robert Smith, Sandra Weafer and Chelsea Wilson.

Decision issued: October 14, 2020 ([2020 LSBC 47](#))

Counsel: Kathleen Bradley for the Law Society; Glenn Arthur Laughlin appearing on his own behalf

BACKGROUND

A hearing panel found Glenn Arthur Laughlin had committed professional misconduct by participating in conflicts of interest over the course of several years while acting as corporate counsel and as legal counsel in a divorce proceeding. The Law Society and Laughlin made a joint recommendation that the penalty be a fine of \$12,000. The hearing panel departed from the joint recommendation and imposed a fine of \$5,000 ([2019 LSBC 42](#); [Spring 2020 Discipline digest](#)).

The Law Society applied for a review of the \$5,000 fine.

DECISION OF THE REVIEW BOARD

The review board considered whether the hearing panel erred in mischaracterizing the nature and gravity of the misconduct, considering intent as a highly mitigating factor, failing to apply progressive discipline and departing from a joint submission.

The review board found that the nature and gravity of Laughlin's misconduct were serious because there were multiple overlapping and perpetuating conflicts of interests he should have been aware of as a senior lawyer. Further, the review board found that the hearing panel compared Laughlin's conduct to cases involving less serious misconduct and the cases were not sufficiently similar to this case.

The review board found the hearing panel was correct in considering Laughlin's good intentions but erred in placing too much weight on this factor. The board found that his altruistic intention to help his client was a mitigating factor, but not "highly" mitigating as found by the hearing panel.

The review board also found the hearing panel incorrectly determined that the principle of progressive discipline did not apply because this

was Laughlin's first citation. He had a relevant conduct review on the same problem of conflicts of interest, which the review board considered to be a highly aggravating factor.

The review board found the hearing panel in this case erred in departing from the joint submission of a \$12,000 fine. It considered the proposed fine of \$12,000 to be fair and reasonable given the circumstances.

The review board ordered the \$5,000 fine be set aside and ordered Laughlin to pay:

1. a fine of \$12,000; and
2. costs of the review of \$500.

AMARJIT SINGH DHINDSA

Abbotsford, BC

Called to the bar: June 8, 2001

Review date: March 12, 2020

Review board: Dean Lawton, QC, chair, Nan Bennett, Bruce LeRose, QC, Steven McKoen, QC and Shannon Salter

Decision issued: June 18, 2020 ([2020 LSBC 49](#))

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

BACKGROUND

A hearing panel concluded that Amarjit Singh Dhindsa committed professional misconduct by acting in a conflict of interest, breaching undertakings and failing to honour a trust condition relating to his representation of a developer with respect to its purchase and sale of a development property. A decision on disciplinary action was issued, and the penalty included a seven-week suspension ([2019 LSBC 05](#); [2019 LSBC 36](#); [Winter 2019 Discipline digest](#)).

Dhindsa applied for a review of the hearing panel's finding of professional misconduct and sought a stay of the suspension pending the outcome of the review.

The president's designate applied the criteria for considering the stay of disciplinary action. He noted that the review was not vexatious or frivolous, that Dhindsa is a sole practitioner in a small firm that employs staff who would be affected by his suspension and that there was no risk to clients or the public if the suspension was stayed pending the outcome of the review.

The application was granted, and the disciplinary action was stayed pending the outcome of the review ([2020 LSBC 06](#)).

DECISION OF THE REVIEW BOARD

The review board considered whether the hearing panel erred by failing to consider certain prior disciplinary decisions and their passages related to the standard of proof for professional misconduct, whether

the panel erred in its findings relating to the allegations regarding Dhindsa's conduct and whether the panel's imposition of a seven-week suspension was appropriate.

The review board found the hearing panel's decision not to cite a particular section of a relevant case is not, by itself, a reason to overturn a decision. The review panel examined the passage Dhindsa put forth as the standard of proof that should have been used and concluded the approach was circular and unhelpful in this case.

The review board determined the hearing panel was correct in its application of the rules, findings of professional misconduct and conclusion that the nature, gravity and consequences of Dhindsa's conduct and his professional conduct record were aggravating factors in determining the sanction.

The review board found the hearing panel was correct in imposing a seven-week suspension.

MARK ALAN HOPKINSON

Delta, BC

Called to the bar: October 22, 2002

Ceased membership for non-payment of fees: January 1, 2020

Hearing date: February 10, 2020

Panel: Dean Lawton, QC, chair, Lindsay LeBlanc and Lance Ollenberger

Decisions issued: April 6 ([2020 LSBC 17](#)) and November 10, 2020 ([2020 LSBC 54](#))

Counsel: Sarah Conroy and Kathleen Bradley for the Law Society; no one appearing for Mark Alan Hopkinson

FACTS

Mark Alan Hopkinson was retained in January 2016 to help a client conduct patent searches. He conducted the searches and advised the client of the outcome. After receiving her instructions, he filed a US patent application with the US Patent and Trademark Office. He notified her of the official filing receipt and said he would keep her informed on any developments on the file. They continued to communicate on trademark-related matters. He took further steps on the application in November 2016 and invoiced the client for services, which she paid.

In August 2017, Hopkinson received a notice of allowance from the US Patent and Trademark Office and was advised that an issue fee of \$140 would be required or his application would be regarded as abandoned. He did not advise his client of the notice and did not submit the fee on her behalf. The application was deemed abandoned.

In January 2018, the client emailed Hopkinson to ask about the status of the application. The client did not receive a response, and she called a week later to leave a message. Hopkinson did not return her call. The client emailed again a month later requesting an update, and he did not respond to the email. For approximately three months, the

client continued to try to contact Hopkinson, but he did not answer her calls or return her messages. The client contacted the US Patent and Trademark Office and was advised that the application was abandoned. She called Hopkinson to notify him and requested that he respond. He did not return her call.

In April 2018, the client's colleague went to Hopkinson's office on two or three occasions and discovered it was locked. The colleague finally was able to enter the office and leave a business card asking for a response. Hopkinson called the colleague back, who told him that the application had been abandoned and the client was trying to reach him to fix the issue. Hopkinson emailed the client and said he would prepare a reinstatement package for the application and he would "eat" the reinstatement fee of \$400. He also advised he would get back to her the following Monday or Tuesday.

When she did not hear back from him the following Monday or Tuesday, the client emailed Hopkinson requesting an update and expressing her frustration and anxiety over the situation. He responded and said the reinstatement package was not completed and that he would not work on anything else until it was submitted. This was the last email the client received from Hopkinson, though she continued to call and email him.

Hopkinson did not reinstate the US patent application and did not report to his client that he was not going to submit the reinstatement package. He did not advise her to obtain independent legal advice when he discovered the application was abandoned and did not advise her he was no longer acting on her behalf. The client filed a complaint against him with the Law Society in May 2018.

In June 2018, Hopkinson applied for non-practising membership. The Law Society sent him a letter advising that he must complete a final trust report and finalize other matters. He did not respond to the letter or comply with any of the conditions required. He did not respond to multiple voice messages and emails for approximately five months.

Hopkinson was suspended from the practice of law in January 2019 for failing to respond to the outstanding requests. He was advised to disable all online profiles. In February 2019, he was suspended from the practice of law for failing to submit his final trust report. This was communicated to him by letter, which asked him to contact the manager of the Custodianships department. He did not respond to this request, and he did not complete the outstanding requirements. Further communication was sent to him in February.

Hopkinson emailed the Law Society in February 2019 and advised that his web page, [Hopkinson.ca](#), would be immediately removed. The Custodianships department wrote to him in March regarding his suspension and seeking information about his law practice. Hopkinson did not reply. He continued to operate a website on the domain [www.coastpatent.com](#) and continued to hold himself out as a lawyer until mid-September 2019.

DETERMINATION

The hearing panel found that Hopkinson had engaged in a pattern of non-communication with the client and that the delay was inordinate and inexcusable and caused harm to his client. He failed in providing legal services in a conscientious and diligent manner and to the manner required of a competent lawyer. He was in neglect of his duty to notify and properly advise the client in connection with his errors.

The panel also found that Hopkinson persistently failed to respond to Law Society communications and held himself out as entitled to practise law while suspended.

The panel found that Hopkinson's conduct was a marked departure from the standard expected of lawyers and constitutes professional misconduct.

DISCIPLINARY ACTION

The Law Society wrote to Hopkinson several times regarding scheduling the disciplinary action phase of the hearing. Hopkinson did not

respond to the request. The Law Society applied to have the hearing proceed on the written record. Hopkinson did not respond to the application correspondence.

The panel found that a decision could be made on the basis of written submissions and ordered the disciplinary action phase of the hearing to proceed (2020 LSBC 38).

The hearing panel considered the serious nature of Hopkinson's repeated and consistent failures to respond to his client and to the Law Society, his previous professional conduct record, the harm to the client caused by his misconduct, the range of sanctions in prior cases and the need for deterrence and to instill public confidence in the integrity of the legal profession.

The panel ordered that Hopkinson:

1. be suspended for three months, commencing the date he is re-admitted to the Law Society; and
2. pay costs of \$9,512.75. ♦

Conduct reviews ... from page 17

3-96.1) and rule 6.1-5 of the *Code of Professional Conduct for British Columbia*. The lawyer stated that his legal assistant had used his Juricert password only in his presence and while he stood beside her. The practice was established for administrative convenience, as the software was installed on her computer only. Since the breach was brought to the lawyer's attention, the Juricert software has been installed on his computer and he has changed his password. He now personally prepares documents for registration with the Land Title Office, including affixing his digital signature. (CR 2020-29)

DRIVING WHILE IMPAIRED

A lawyer engaged in conduct unbecoming by consuming alcohol such that he failed two breathalyzer tests (resulting in a 90-day roadside prohibition) and by being less than forthright with the police. The lawyer was remorseful and self-reported to the Law Society. He recognizes the importance of acting with integrity in his private life as well as his professional life and apologized to a conduct review subcommittee on behalf of the profession and the Law Society. He assured the subcommittee this was an isolated event and not a pattern of behaviour. He committed that in the future he will refrain from consuming alcohol before driving. (CR 2020-30)

MISREPRESENTATION TO THE COURT

While acting on his own behalf, as well as on behalf of his wife and

his former law corporation, a lawyer filed a case plan proposal that contained statements he knew to be inaccurate, contrary to rules 2.1-2(a) and (c) and 2.2-1 of the *Code of Professional Conduct for British Columbia*. The lawyer had planned to make a request for complete discovery responses and to file an amended notice of application to dismiss, such that the statements in the proposal would be true by the time he spoke to the proposal in court. However, he did neither. The lawyer acknowledged that he was mistaken to view the accuracy of these case plan proposals as unimportant and agreed that statements filed in court must be accurate. He has been very careful to be accurate in all of his subsequent court filings. (CR 2020-31)

BREACH OF POWER OF ATTORNEY ACT

A lawyer acted as an attorney under her mother's power of attorney and distributed gifts and loans in excess of the limitation under the *Power of Attorney Act* and Regulation, contrary to rule 2.2-1 of the *Code of Professional Conduct for British Columbia*. The *Power of Attorney Act* states that an attorney must not be compensated unless provided for in the power of attorney document. There was no such clause in this case. The lawyer admitted that she should have read the *Power of Attorney Act* or sought legal advice before reimbursing her personal expenses and paying herself a fee out of her mother's accounts. She was remorseful and agreed not to accept either a power of attorney or executrix appointment in the future. (CR 2020-32) ♦

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The Law Society
of British Columbia



845 Cambie Street, Vancouver, British Columbia, Canada V6B 4Z9

Telephone 604.669.2533 | Facsimile 604.669.5232

Toll-free 1.800.903.5300 | TTY 604.443.5700

www.lawsociety.bc.ca

Lawyers Indemnity Fund

Telephone 604.682.8911 | Facsimile 604.682.5842