

CONSOLIDATED WRITTEN BRIEF OF KEVIN A. MCLEAN (B.A., J.D., CIM)

In the **MCLEAN PROCEEDINGS**, defined infra

The Plaintiff: MR. KEVIN A. MCLEAN (B.A., J.D., CIM) 20510-732 Davie Street, Vancouver, BC, V6Z1B0 S-1410056 Re: A claim in damages against the LSBC and individual defendants of the LSBC	The Defendants: Law Society of British Columbia and Lawrence Dirk 750 – 900 Howe Street Vancouver, BC Attention: Nathanson Schachter Thompson LLP Claims against them dismissed on grounds of qualified legislative immunity: Philip Riddell, Mark Bussanich, Howie Calwdell, Deborah Armour and Alison Kirby
THE PETITIONER: MR. KEVIN A. MCLEAN (B.A., J.D., CIM) 20510-732 Davie Street, Vancouver, BC, V6Z1B0 S-1711429 Re: A matter under the <i>Constitutional Question Act</i>, R.S.B.C. 1996, c. 68 (“<i>CQA</i>”) and amendments thereunder and challenge to the <i>Legal Profession Act</i>, S.B.C. 1998, c. 9 (“<i>LPA</i>”) and amendments thereunder with specific reference to sections 11 (1 – 3), 36 (a – d) (i), 37.1, 41(2) and 88 (1.1 to 1.3) of the <i>LPA</i>	THE RESPONDENT ATTORNEY GENERAL OF BRITISH COLUMBIA PO BOX STN 9280 STN PROV GOVT 1001 DOUGLAS STREET VICTORIA, BC, V8W 9J7

THE PETITIONER: MR. KEVIN A. MCLEAN (B.A., J.D., CIM) 20510-732 Davie Street, Vancouver, BC, V6Z1B0 s-180732 Re: A matter under the <i>Constitutional Question Act</i>, R.S.B.C. 1996, c. 68 (“<i>CQA</i>”) and amendments thereunder and challenge to the <i>Law Society of British Columbia Rules</i> and amendments thereunder with specific reference to Rules 3-5, 3-6 and 4-55 of the LSBC Rules	THE RESPONDENT: LAW SOCIETY OF BC 750 – 900 Howe Street Vancouver, BC Attention: Nathanson Schachter Thompson LLP
THE PETITIONER: MR. KEVIN A. MCLEAN (B.A., J.D., CIM) 20510-732 Davie Street, Vancouver, BC, V6Z1B0 s-175785 Re: A matter under the <i>Judicial Review Procedure Act</i> in relation to the May 27, 2014 Search and Seizure Order (“SSO”) granted by Philip Riddell (“ADM” or “COD”) in relation to the “Privileged and Confidential Application” (the “PCA”) delivered by the ADM’s solicitor, Mark Bussanich, on May 23, 2014 and execution of the SSO thereafter	THE RESPONDENT: LAW SOCIETY OF BC 750 – 900 Howe Street Vancouver, BC
THE PETITIONER: MR. KEVIN A. MCLEAN (B.A., J.D., CIM) 20510-732 DAVIE STREET, VANCOUVER, BC, V6Z1B0 S-173987 Re: Claims in malicious prosecutions against the LSBC and abuse of process against the Defendants	THE DEFENDANTS: LAW SOCIETY OF BRITISH COLUMBIA, PHILIP RIDDELL, MARK BUSSANICH, DAVID MCCARTNEY, LAWRENCE DIRK, HOWIE CALDWELL, ANDREA CHAN, WENDY HO, KELVIN FONG AND DEBORAH ARMOUR LAW SOCIETY OF BC 750 – 900 HOWE STREET

	VANCOUVER, BC

Re: Hearings on TBD dates

Hearing Duration: _____

Glossary and Defined Terms

Petition Record: (“PR”) **Book of Authorities:** (“BOA”) **Kevin A. McLean (B.A., J.D., CIM)**
(the “**Plaintiff**” or “**Petitioner**”)

LSBC and AGBC (collectively, the “Respondents”)

Law Society of British Columbia (the “**LSBC**”)

Law Society of British Columbia Discipline Committee (the “**LSBCDC**”)

Chair of the LSBCDC (the “**COD**”)

May 27, 2014 Search and Seizure Order of Mr. Philip Riddell, then COD of LSBC (the “**SSO**”)

A search and seizure order granted pursuant to Rule 4-55 (an “**ASSO**”)

If under a section involving the AGBC and “Respondent” is used, it refers to the AGBC alone If
under a section involving the LSBC and “Respondent” is used, it refers to the LSBC alone

Legal Profession Act, S.B.C. 1998, c. 9 (the “**LPA**”)

Interpretation Act, R.S.B.C. 1996, C. 238 (the “**IA**”)

Judicial Review Procedure Act, R.S.B.C. 1996, c. 241 (the “**JRPA**”)

Administrative Tribunals Act, S.B.C. 2004, c. 45 (the “*ATA*”)

REPLY ATTENTION OF: Mr. Kevin A. McLean (B.A., J.D., CIM)
FACSIMILE ADDRESS FOR REPLY: mclean@searchandseizure.ca

June 16, 2021

Dictated with Voice Recognition Software

Without Prejudice Except to Costs

Dictated with Voice Recognition Software

Letter via Facsimile, Email and/or Hard Copy

NATHANSON SCHACHTER AND THOMPSON LLP
Fax: 604.684.1598

Attention: Ms. Lockhart

Attorney General Of BC (“AGBC”)
Attention: Mr. Stephen E. King

RE: OFFER TO SETTLE – PURSUANT TO RULE 9-¹ OF THE SUPREME COURT CIVIL RULES

- a. S-1711429 Petition under the *CQA* filed in December 2017 (the “*LPA Petition*”)
- b. S-180372 Petition under the *CQA* filed in January 2018 (the “*LSBC Rules Petition*”)
- c. S-175785 Petition under the *JRPA* filed in July 2017 (the “*JRPA Petition*”)

¹ Unknown before regarding their practice

- d. S-1410056 Action filed in December 2014 (the “**Damages Action**”); and
- e. S-173987 Action filed in April 2017 (the “**Malicious Prosecution Action**” or “MP Action”)

(collectively, the “**McLean Proceedings**”)

f. **McLean v. AGBC at the BCCA (“LPA Petition”)**

(a to f on their own, a “Proceeding”)

(collectively, the “Proceedings”)

Dear Sirs/Mesdames:

Introduction

In light of the recent developments in the jurisprudence with the embed and entrenched admissions by the LSBC1 along with Ms. Bevan’s partial correction of the court record² in the face of demands³, I write to settle the McLean Proceedings and LPA Petition (by way of consent dismissal at the BCCA) by way of a global formal offer pursuant to Supreme Court Civil Rules, R. 9-1 along with any applicable rules at the BCCA or Supreme Court of Canada (the “**Formal Offer**”).

I reserve the right to bring this to the attention of the Court in relation to costs after the Court has pronounced judgment on all issues in any Proceeding or the Proceedings.

I have adopted the definitions from previous correspondence, court filings and decisions for ease of reference. I reserve the right to edit this Formal Offer for grammar, spelling, footnoting et al but the substance should put you on notice of the opportunity.

In light of the above, I will be precise yet not entirely exhaustive as I may have some aspects to add. However, this is a perfect time for the various parties above to move forward with the legislation not being challenged further and the LSBC having a decision that is beneficial to their current warrantless searches and seizures of members.

Further, in light of the LSBC’s Privacy Division, managed by Ms. Lockhart, being on a **stringent time requirement** to respond substantively to my privacy request, it is an appropriate time for me to trigger the potential of double costs and seek resolution that will be mutually beneficial for the Parties and the public.

I say, parenthetically, that I was most impressed with the complaints division of the LSBC and its attention to detail in how it handled a complaint regarding correcting of the court record and the requirements before, during and after.

It is unfortunate that there was misleading of the Court at the Court of Appeal but it was an indirect form of flattery that the AGBC did not wish to face the written factum.

² Still requires a further changing of the record that is consistent with the facts and law

³ Along with change of counsel

Certainly, if the **Formal Offer** is not accepted, then I will take active steps forthwith to bring sworn evidence to the attention of the relevant courts, bodies or persons without further notice to any of you.

It is not intended to be in any way antithetical to settlement but I have learned that acting swiftly and putting deadlines upon the various responding parties is important⁴ and the interests of justice.

As such, I present this Formal Offer as an opportunity so the governmental and law society resources are not wasted on matters where the facts are not in dispute and recent admissions regarding practice and procedure are binding.

Part 1: Vavilov

By way of overview, my positions remain the same as to order of hearings albeit somewhat academic or moot because of *Vavilov*.

In June 2017, Justice Grauer found that Mr. McLean indeed had a damages claim if the Warrantless Search And Seizure Order (“SSO”) was set aside for any of the nine (9) disjunctive grounds.

While I maintained that it was incorrect to bifurcate in such fashion with a judicial review, I moved the matter forward with a judicial review petition. The only debate on the record was the standard of review being whether reasonableness or correctness applied to the SSO (and the conduct leading up to the granting of the SSO and thereafter).

However, with the continued unlawful p⁵ossession by way of search and seizure pursuant to the Warrantless SSO, and the change in law, along with it being a *Charter* matters being of national importance and public interest, the standard of review issue is no longer in issue. However, I remain steadfast that the law, even in that state, would have remained as a correctness standard (see: Judicial Review Petition and Amended Petition).

*Vavilov*⁵ became law of the land on December 19, 2019⁶. The secondary sources refer to it in affectionate terms as the “Spies Who Saved Judicial Review”.⁷

In short, the rule of law requires constitutional questions to have the correctness standard. Therefore, the Court, in reviewing the constitutionality of the Warrantless SSO will not extend any deference to such a decision.

Further, there will not be any deference to the “system”, the lead up, the granting, and execution of the same. This was not addressed in the **Matajawa Decision** (defined *infra*).⁷

Part 2: Mulgrew

⁴ Six certificates of non-attendance for discovery in 2015

⁵ SCC 65

⁶ Only a decade or so after *Dunsmuir* 7Taylro article:

⁷ See below

While the LSBC, through NST, attempted to argue that the legislation did not authorize a search or seizure, and nor did the LSBC Rules, or the conduct was merely an “investigation order”, the LSBC took the opposite position in *Mulgrew*.

Notably, it did so in the same temporal period but also on a far less intrusive order of Mr. Mulgrew – a non-member of the LSBC. This is a ground for special costs in the LSBC Proceedings.

Mulgrew, the LSBC **admitted** that a requirement to produce by a regulator is a seizure at law (see: **BOA Tab 7, *Mulgrew*, para 23**).

Mr. Justice Butler found that a non-member, like Mr. Mulgrew under s. 26, did not face any **quasicriminal** aspects. The same cannot be said for search and seizure authorizations under s. 36 of the *LPA*. Further, Mr. Justice Butler found that if a non-member like Mr. *Mulgrew* refused, any **contempt hearing** under s. 26 would necessarily be reviewed, “it is well established in British Columbia that, on a regulatory body’s application to court to enforce a subpoena it has *issued*, the court will entertain argument about the necessity or reasonableness of the subpoena, or indeed about the **validity of the legislation** under which it was issued

Mr. Justice Butler declined to rule on the issue of the LSBC’s reliance on ss. 88(1.1) in compelling a nonlawyer, Mr. Mulgrew, to produce solicitor-client records for searches and seizures by the LSBC, on the grounds of mootness. However, he noted the significance of such a provision for members of the profession (see: **BOA, Tab 11, para 87**).

In any event, the law of search and seizure has been well settled. It appears that the LSBC has taken another different position. *Hollander v. Mooney*, [2017 BCCA 238](#), Madam Justice MacKenzie, for the court, stated at para. 79: “Conduct that is an abuse of process is, by its nature, reprehensible and deserving of rebuke.” The Court found in *Glover v. Leakery* at para 42: “I found that the inconsistent pleading by the defendant was an abuse of process because the principles such as judicial economy, consistency, finality and the integrity of the administration of justice were violated. The court cannot condone such ⁸conduct.”

Part 3: Lawyer “A” (“*Majawa Decision*”)⁹

While *Vailov* unequivocally determines the *JRPA Petition*, the **Majawa Decision** unequivocally determines the unlawful execution of a Warrantless Search and Seizure Order and attracts the very damages found, by Mr. Justice Grauer, could be awarded.

In reviewing this case, I note the following from the outset:

1. The petitioner failed to bring an Action for Damages as I have;
2. The petitioner failed to obtain a copy of the underlying legal opinion to the Chair of the LSBCDC⁹ as I did before Mr. Justice Bowden;

⁸ BCSC 914

⁹ In *Majawa*, it was the Vice Chair that issued it

3. The petitioner neglected or failed to challenge other LSBC Rules by way of constitutional challenge or JRPA;
4. The petitioner primarily challenged the scope¹⁰ of the Warrantless SSO;
5. The petitioner had already consented to a two month suspension of his legal practice¹¹;
6. The LSBC refused to produce the legal opinion and it was not before the Court¹²;
7. While the Judge was “told”¹⁴, there is no much evidentiary value that can be placed before that type of telling because of the discrepancies in affidavit evidence versus the actual document discovery¹³;
8. The LSBC executed the SSO some one week after the petition returned from suspension while employing other lawyers and paralegal¹⁴;
9. The focus of the Bains SSO was the firm’s electronic and physical documents;¹⁵
10. The petitioner submitted that he did not consent but was provided with and executed an Acknowledgment Form;¹⁶
11. The LSBC did not begin their “collection”¹⁷ of the Firm’s records until after the petitioner executed the Acknowledgment Form;
12. The focus between the lawyer’s counsel and the LSBC was scope and relevancy;²⁰
13. *The LSBC admitted it was the entire practice and there is no evidence that the LSBC attempted to enter the home of the lawyer*;¹⁸
14. The LSBC’s continued focus was on the basis of exclusion request after the seizure at the office¹⁹;
15. The LSBC excluded certain materials that related to the petitioner’s work for a charity²³;
16. The independent adjudicator stayed the exclusion requests pending judicial review²⁰ and the LSBC was on hold²⁵
17. The judge found that the scope of Rule 4-55 has been first considered;²¹
18. The petitioner submitted and the judge agreed²² that the test was “reasonable belief” without challenging whether reasonable belief was constitutional;²³
19. There was an allegation of money laundering against a securities solicitor;^{24,25}
20. The Rule 4-44 Order requires the extra of seeking, and being granted, authority by the LSBCDC 30 based on “reasonable belief” that “any misconduct” may have occurred but confined to a lawyer’s practice;^{26 27}
21. The petitioner failed to specify the ground of the JRPA²⁸
22. The LSBC takes the position that R. 4-55 Order is **not judicially reviewable** because it is not the exercise of a statutory power of decision under s. 1 of the *JRPA*²⁹;

¹⁰ Para 18 “at the heart of the dispute”

¹¹ Para 10

¹² Mr. Bussanich legal opinion which is titled “Privileged and Confidential”; Mr. Riddell admitted in discovery that he (as an administrative decision maker) was in a solicitor client relationship with Mr. Bussanich 14Para 13, sentence 3

¹³

¹⁴ Nice touch; quite gangster of you

¹⁵ Para 21

¹⁶ Para 22

¹⁷ Not the legal test for search and seizure; notably Majawa only addressed “seizure” whereas s.8 is disjunctive. 20One part of the Hunter test; para 29

¹⁸ Para 25

¹⁹ Section 8 breaches necessarily fail under section 1 23Para

²⁰

²¹ Para 34 25Para

²²

²³ Error of law

²⁴ Para 52

²⁵ Para 48

²⁶ Para 56

²⁷ Para 73

²⁸ Para 78

²⁹ Para 84

²⁰ Para 92; McLeand did;

²¹ This is quite a distinction because in the McLean v. LSBC case, Justice Grauer ordered that the application, Warrantless SSO and execution of the same be judicially reviewed. This is a binding finding.

23. Matajawa found that the exclusion requests may be judicially reviewable³⁰;
24. With respect to action versus judicial review, Justice Grauer found that the SSO should be judicially reviewed but the issue of consent could ground an action for civil damages;³⁶
25. The LSBC refused to disclose the legal opinion in Matajawa but was compelled by court order to disclose in the McLean Action;
26. Matajawa found that the Rule 4-55 Order was unreviewable and the legal opinion was irrelevant;
27. In Matajawa, the LSBC did not waive privilege over the opinion but in the McLean Proceedings they did and were compelled by court order to produce it and did. Further, Mr. McLean also obtained admissions against Mr. Riddell in examination for discovery;
28. There was no challenge to the underlying bases for the Rule 4-55 Order because the legal opinion was not before the court;
29. Only the issue of seizure was raised and the Court found against the LSBC that the copying is a seizure³²;
30. The Court found that personal cell phones have a great expectation of privacy;³³
31. The Court found and reaffirmed that Rule 4-55 Orders are warrantless and presumptively unreasonable;³⁴
32. The issue of demanding entry into a home was not canvassed; and 33. Consent:
 - a. The Law Society points to the petitioner's signature on the Acknowledgement Form³⁵;
 - b. There is no indication in the evidence that he did not cooperate. He signed the Acknowledgement Form and there is no suggestion that he did not understand its contents;
 - c. Had the petitioner not cooperated by, for example, refusing to provide the location of the documents or **demanding that the investigators leave** the Firm's premises without taking any materials, then, as Law Society **concedes**, judicial authorization to seize the documents could have been sought.

Returning to the Lawyer's Signature and Para 171

The LSBC has admitted, and conceded, that the signature of a lawyer to the Acknowledgement Form is a requirement of voluntary consent. Further, the LSBC has conceded, like Mr. Dirk did in discovery (the "Dirk Admission") that if a lawyer refuses to cooperate with the Rule 4-55 Order in doing any of the following:

1. Refusing to provide the location of the document; or
2. Demanding the investigators leave the Firm's premises,

Then the LSBC **must seek judicial authorization** to obtain the seized document.

Mr. McLean does not concede that many portions of the judgments are correct or relevant, and nothing in this offer should be construed as such. Moreover, Mr. McLean's JRPA Petition addresses the issue of Rule 3-5.01 in that the lawyer is suspended if he or she does not comply which was not addressed in the DOJ Judge decision.

Part 4: Evidence and Admissions of the Investigators

³⁰ Para 94; This is not an issue in the McLean Proceedings;

³¹ BCSC 987, para ____

³² Para 142

³³ Para 144

³⁴ Para 145

³⁵ Para 168

Mr. McLean cites the relevant evidence from **June 2, 2014**:

“It appears he works from home so we may need to go to his home as well....We are ready to go whenever Larry says go.

Mr. McLean shall cite the relevant evidence on **June 3, 2014**

- June 3, 2014, At 11:24 a.m., McCartney sent the following e-mail to Bussanich titled, “one important fact”:
- “I just spoke to the receptionist Laura Paulson. She advised that Mr. McLean came in with King she said to McLean ‘these people from the Law Society and they are here to see you.’ McLean walked past saying, ‘**Well I do not want to see them.**’
- **June 3, 2014**, at 2:29 p.m.,
- David McCartney sent an email (**only** material excerpts included) to Bussanich regarding the Plaintiff’s agent who was sent on the Plaintiff’s instruction and **authority**:
 - “....we located the Kevin A McLean Trust cheque book acct and gave her cheques.
 - “He demanded to know why we were in his office.
 - “Peggy said in her opinion based on her knowledge of McLean, we won’t be seeing him her today”
 - “Interestingly that he left so quickly this morning that he left his house and office keys”
- **June 3, 2014, At 3:58 pm**
 - McLean’s computers are stand alone and he is not hooked into the Paulson and Co system. There is no lock on McLean’s door. DJM”
 - the Plaintiff attempts to obtain his keys through authorized third party and Andrea Chan yells at the Petitioner’s assistant, “Nothing leaves this office” (“**Constructive Seizure**”).

Mr. Bussanich, who was solicitor to the Chair or ADM, found that Mr. McLean did not consent to the search and seizure of his office. While the LSBC has taken the position that they did not collect anything, this is a distinction without a difference (see: Thompson Newspapers). Mr. Bussanich stated as follows:

“On June 3, 2014, designated representatives of the Law Society attended at your office and waited for your return until 5:15 p.m. The designated representatives present consisted of one investigator and two forensic accountants. The investigator was present only to ensure the forensic accountants could commence their investigation of your books, records and accounts. They did not conduct any investigation as they did not have your cooperation to do so. Your understanding that the designated representatives had access to all of your information yesterday is incorrect. We are aware that you were in your office shortly after 10:00 a.m. yesterday and you were told representatives of the Law Society were present to meet with you. You left your office knowing they were present. It is the Law Society's position that you were not cooperative with the Law Society's investigation yesterday.”

This is misleading because the investigator was aware that I did not consent at the time and thereafter and they were to leave. However, the LSBC has recently conceded that it would have required to leave so once consent is denied, that is the end of the matter.

Part 5: Decision of the LSBC (February 2015)

The LSBC decision found that Mr. McLean did not consent:

“To date, Mr. McLean has not provided access to his home office computer, nor has he provided his working login and password information for his GoDaddy and DropBox accounts. He has also not provided his cell phone or cell phones or other mobile devices for imaging.

In addition, with regard to factor (a), we note that, while cooperation with Law Society investigations in all respects is important, Mr. McLean’s conduct constitutes non-compliance with an order. Non-compliance with the orders of **statutory bodies** and courts is considered **grave**: Law Society of BC v. Welder, 2014 LSBC 58.”

The LSBC did not seek a review or appeal of this decision that Mr. McLean’s non-compliance was an **order of a statutory body** so therefore the LSBC counsel and the Hearing Panel agreed and found that it was a statutory power of a decision.

However, in the proceeding above, the LSBC is now taking another inconsistent position between cases. The only modicum of potential difference is that the LSBC views the Warrantless SSO differently than the Rule 4-55 order against the Mr. **Veinotte Client**.

Part 6: Pleading and Admissions of the LSBC

As agent for his client, Mr. Gomery admitted the following:

March 30, 2015, Certified Transcript, PR, Tab 2, Affidavit #1 of Petitioner, Exhibit "B", page

To the notion that the lawyer could examine, could authorize the production but couldn't copy is not a sensible reading of the statutory intent, in my respectful submission, that **taking copies** is simply an **ordinary** and **natural** part of an examination. In fact, the examining of books, records and accounts in this **day and age**, the alternative would be that what the **statute** is authorizing is that the investigators may **go in**, they may look, they **may require him to show**, but they may not actually take a photocopy. They may not actually make a record of what they're being shown. In my submission that is not a **sensible** reading of the statute.

RE: MADAM JUSTICE GEROW PERFECTLY IDENTIFIES AND DELINEATES THE LEGAL ISSUE

THE COURT: But I thought the issue here is whether or not they are entitled under this **section 36** to make a rule which allows them to **go in** and **search** and **seize documents** on the site with -- I mean, this rule says that it's requiring a lawyer to cooperate with an investigation or examination on request. There's nothing in here which -- wait just a moment.

MR. GOMERY: I understand.

THE COURT: Which on a plain reading -- and if you're asking me to plainly read -- that **allows a search and seizure of material** in -- without consent or on request, presumably, and then you get your consent. But that's what the argument is, is that -- not that they -- I mean, if there was an investigation where they had permitted you to come in and permitted the investigation to go on, of course, you know, it makes sense that you could copy the documents in that context. What Mr. McLean is actually complaining of is that **the rule that your client relied on, that took -- allowed them to go further than that**. It allowed them to go in and **search and seize without an order** under section 37, and that's the issue, is whether or not that **constitutionality** of that rule is made out.

On April 13, 2015, the LSBC made the following admissions in its filed **Amended Response to Civil Claim** (see: **PR, Tab 4**, Affidavit #1 of Petitioner, Exhibit “B”, page 9).

“Having regard to the information and concerns that led to the making of the **Rule 4-43 order** and consistently with the **LSBC’s standard practice in such case**, Mr. Bussanich and the LSBC considered it important that the Plaintiff **only** become aware of the order upon the commencement of the investigation by the investigators **taking possession of copies of the plaintiff’s documents**, to avoid any risk of tampering or alteration by the plaintiff.”

As pleaded by the LSBC, it subjectively feels that the “...the LSBC chose to conduct its investigation under the Law Society Rules through the Rule 4-43 order as a **fair, effective**, and **economical alternative** to a **court application** under s. 37 of the *Legal Profession Act* or otherwise.”

On May 29, 2015, the LSBC made the following admissions and submissions before The Honourable Madam **Justice Gerow** (see: **PR, Tab 4**, Affidavit #1, Exhibit “D”):

LSBC: Now, in my submission there's nothing here to express a **legislative intent** that records means anything less than records as defined in the Interpretation Act. And having regard to the purpose, the purpose is of course the investigation of books, records and accounts of a lawyer. It is necessary that the Law Society not be **stopped cold** in its investigation if the lawyer has decided to mix personal and business records on a hard drive, as lawyers do.

THE COURT: Well, **they wouldn't be stopped cold**. That's the point. They would make an application under section 37, which would allow them **if they had appropriate evidence** to then go in and -- ...you can't say they would be stopped cold.

They would be not able to **seize** or to copy **the entirety of a hard drive** presumably if it was within the -- **if that didn't fall within the definition of records under section 36**, but that wouldn't preclude the Law Society from then saying well, we want the computer, the hard drive computer for this particular individual. **We need to make an application to court**. So that's -- section 37 allows that, so I don't understand that submission.

MR. GOMERY: It's -- **I think I overstated it**.

There was another important exchange where the LSBC provided its position on why the seizure of limitless records in a member’s office or home is reasonable at page 40 of the transcript (see: **PR,, Tab 4, Affidavit #1 of the Petitioner, Exhibit “D”, page 16**):

Mr. Gomery:

The whole process is one that's designed to capture professional records, recognizing that personal records **may be caught** where they're mixed up with professional records, and of course it includes a process for independent oversight for the exclusion of records that contain personal information not relevant to the investigation. Mr. McLean has made some submissions which amount to a criticism of the independence of that -- of the independence of the oversight, a criticism of the process. In my submission those points do not go to the *vires* of the rule, **where they go to is Charter challenge, to the reasonableness of the rule**, and that is not a matter that is before -- with us today. I think just on that subject I should refer to one aspect of the working group report.

MR. GOMERY: And then Mr. McLean read to you paragraphs 1, 2, 3 and 4, and I simply wish to draw to your attention point number 6. I won't read it, but here is the process contemplated pursuant to the rule 4-43 order. It's an extensive process. Mr. McLean said, *where is the protection for me?* **The answer is here it is.**

At Page 31, Mr. Gomery admitted:

So that's the rule we're arguing that [indiscernible] lays out.

Now, the rule does not authorize a search and seizure of records without the lawyer's consent. It requires the lawyer to consent, but it doesn't purport to confer a power to seize records if the lawyer is **objecting**

Part 7: Gerow Decisions 2015 BCSC 1431

She found, inter alia, as follows along with further admission by the LSBC

1. LSBC **admits consent** is required to carry out search and seizure in office and home
2. She finds that the power to grant a Rule 4-43 order pursuant to s. 36 is clear but whether it is constitutional is for another day
3. Her Ladyship perfectly identifies the issue and finds that the LSBC does not have the power to suspend Mr. McLean for failing to comply with an **SSO** or enter his home

Part 8: October 2015 – Letter Regarding Consent

October 7, 2015, Mr. Geoff Gomery wrote as follows in response to that request:

You request ‘the return of the documents that you seized you without my consent’. The Law Society is not in possession of the original documents obtained from you. It is in possession of copies. There is an *issue in this litigation* as to whether the Law Society obtained those copies with your consent.

Part 9: Admissions of Riddell, Chair of Discipline Committee

The admissions were as follows by the Chair of the LSBCDC

Page 27

2 A The 4-43 materials in support of the **application**.
3 105 Q Okay. Now, when you say the **4-43 application**, 4 you're
referring to what Mark Bussanich has 5 provided you, correct?
6 A I'm referring to the **opinions** or the supporting
7 materials in the two binders. I believe I received
8 an electronic version on the Friday, the 23rd, and
9 a paper version on the 26th with all the 10 attachments. That's the bundle of
materials I'm 11 referring to.

(the “**Admission: LSBC Application**”)

Page 30

18 129 Q Now, Mr. Riddell, just because I've never seen it,
19 there are **no reasons** that supplement your order 20 that
you've listed or produced in documents, 21 correct?
22 A **No**.
23 130 Q Was there a transcript of the hearing that led to 24 this
Rule 4-43 order?
25 A **No**.

(the “**Admission: No Reasons**”)

Page 31

1 131 Q It was all done via either e-mail or delivery to 2
your office and/or e-mail, correct?
3 A It was done based upon the materials delivered to 4
my office.
5 132 Q Via courier?
6 A Via courier and also via e-mail.
7 133 Q In arriving at the order, you didn't attend the Law 8
Society and discuss in person with Mark Bussanich, 9
correct?

10 A **I did not attend the Law Society.**

11 134 Q Okay. He did not attend your office?

12 A **He did not attend my office.**

13 135 Q You did not receive any affidavit evidence in 14
support of this Rule 4-43 application, correct?

15 A I received the materials I've described before.

16 136 Q Okay. But there was no -- there was no sworn
17 evidence, correct, I'll get you --

18 A I received those materials I described before, and 19 **nothing**
was under oath.

20 137 Q Okay. Nothing was under oath. Thank you for that.

(the “**Admission: No Sworn Evidence**”)

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1 189 Q And in that capacity, when he's giving you a legal 2
opinion, it's legal advice, correct?

3 A In the capacity of being in the discipline

4 committee -- 5 190 Q M-hm?

6 A -- **I am taking legal advice,** as are all of the 7
members of the committee.

8 191 Q And in that capacity, he is the **solicitor** and you 9
are the **client**, correct?

10 A I believe that's a **fair characterization**

(the “**Admission: Solicitor-Client Relationship**”)

Page 56

8 268 Q Just so I have your evidence correct, after
9 receiving these documents, or this document, this
10 opinion, privileged and confidential, you don't 11 seek any
clarification from Mark Bussanich before 12 signing the order,
correct?

13 A I don't seek -- I don't have a communication with
14 Mr. Bussanich with regard to the contents of the
15 materials sent to me because it is my obligation

16 under 4-43 to determine, and the language used in
17 4-43, it is set out here, is if I reasonably
18 believe that a lawyer or former lawyer may have
19 committed a **discipline violation**. That is the test
20 I apply, reasonably believe, and that is the test
21 which was applied. If the materials do not meet
22 that test, the order is not signed; if the 23 materials meet the test, the order is
signed.
24 269 Q Have you ever received an application for a Rule 25
4-43 order that you've rejected?
A I don't believe that I have.

(the “**Admission: Discipline Proceeding**”)

Page 76

1 367 Q -- correct? So you would agree with me that there
2 is a section under the *Legal Profession Act*,
3 Section 47, that allows a member to apply for a 4 review on the record, correct? You're
aware of 5 that section?
6 A Of a hearing panel decision, yes.
7 368 Q M-hm. But you're not a **hearing panel**?
8 A No, I'm not. I believe I would be subject to the 9 **Judicial Review Procedure Act**,
though.

(the “**Admission: JRPA Applicable**”)

Page 80

1 395 Q Fair enough. And you'd agree with me this is 2
done -- obviously you said *ex parte*?
3 A Yes.

(the “**Admission: Ex parte**”)

Part 9 : Appellate Proceeding

LSBC brought forth an appeal to its loss on a variety of issues and made a variety of **admissions** about its interpretation of its powers based on the statutory scheme (see: PR , Tab 4, Affidavit #1 of Petitioner, Exhibit “F”):

“A striking gap in the regulatory regime is revealed if a lawyer under investigation is able to **limit the investigation of business and practice records** simply by keeping them off-site. Having regard to the mandate...**such a gap cannot have been intended** by the Legislature.

“What determines whether the investigator should be permitted to **seize** or demand records **located** at a **lawyer’s residence** is the **purpose** for which they were created. Determining whether records are properly subject to an investigation requires an inquiry into the circumstances surrounding the creation of the records. It does **not depend** on their **location**.

Part 10: Admissions of the LSBC through its seasoned investigator

At page 65 and 66, Mr. Dirk admitted the following, consistent with the LSBC’s concession:

24 MR. McLEAN:

25 366 Q What do you do, Mr. Dirk, when a member doesn't

1 consent with a Rule 4-43 order? Because you've had 2
some; correct?

3 A Yeah, that is correct.

4 367 Q What do you do?

5 A I go back to the office with the professional

6 conduct lawyer in charge of the investigation,

7 explain what happened. And then the professional

8 conduct lawyer may ask the assistance of the

9 **discipline council** to go and **get a Supreme Court** 10 **order to obtain those**
records if the member says no.

11 368 Q Got it.

12 A And I've gone down that road.

13 369 Q And you've gone down that road, correct.

14 So, Mr. Dirk, if a member doesn't cooperate, you 15 don't go into his office
without his consent; 16 correct?

17 A **That is correct.**

Part 11: Review of Some Select Findings

LPA Challenge

The chambers justice (Van De Witt) found that the issues of law transcend the appellant and engaged questions of national and public importance that remain unanswered (see: **AR, page 57**). Questions are specifically about the correct legal tests for each distinct legal issue (see: **BOA, Tab 1 at para. 72**). The standard of review is **correctness**.

Privilege - Chambre

Finding these sections unconstitutional when measured against s. 8 of the *Charter*, the SCC found so for the following reasons: *no notice* given to the client; *inappropriate burden* placed on the notary or lawyer; compelling disclosure is *not absolutely necessary*; and no measures have been taken to help mitigate the

impairment of professional secrecy. The significant issue of the unconstitutionality of ss. 88(1.1) and (1.2), which were not enacted in *Greene* and not tested in *Mulgrew or Matajawa* generally or in relation to members of the profession, is now before the court.

Justice Grauer – Finding

Mr. Justice Grauer went a step further than Madam Justice Gerow in finding that the LSBC had authority to grant the form of investigation order it did against Mr. McLean under Rule 4-43 (as it then was), pursuant to section 36 of the *LPA* (see: **BOA, Tab 23**, at para 75).

In Branch, the Justice considered himself bound by British Columbia **authority** to find that s. 128(1)(c) authorizes a "seizure": *Bishop v. College of Physicians & Surgeons of British Columbia* (1985), [1985 CanLII 569 \(BC SC\)](#), 22 D.L.R. (4th) 185 (B.C.S.C.), and *College of Physicians & Surgeons of British Columbia v.*

Bishop (1989), [1989 CanLII 2674 \(BC SC\)](#).

Part 12: Section 8 of the Charter

Hunter is the default standard with respect to measuring impugned legislation, which authorizes search and seizure of records in the context of a quasi-criminal or criminal investigation, against s. 8.

The words are used **disjunctively** and although in instances it is a search and seizure that will be under scrutiny as was the situation in *Southam*, the *Charter* is worded so that a search or seizure *simpliciter* could offend against the section (see: para 25).

It is evident that the essential characteristic of the situation created by a search and seizure order (and clearly the **only** one that explains the reaction of both judges) is that a public officer is there bestowed with **authority** to force his way, at any time suitable to him and without warning, into the home or business premises of a person and search for and seize documents or things that he may lay his hands on. Such a characteristic is absolutely **alien** to the situation resulting from the service of a *subpoena duces tecum*, whatever the nature and the number of the documents asked for. (see: below part 4).

The *Hunter* criteria can be summarized as follows:

1. there is a system for prior authorization by an entirely neutral and impartial arbiter;
2. the arbiter must be satisfied that the person seeking the authorization has reasonable grounds, established under oath, to believe an offence has been committed;
3. the arbiter must be satisfied that the person seeking the authorization has reasonable grounds to believe that something which will afford evidence of a particular offence under investigation will be recovered; and,
4. the only documents authorized to be seized are those strictly relevant to the offence under investigation.

Arkinstall

This BCA in *Arkinstall* outlined the analytical framework to determine if Hunter criteria apply to impugned legislation: (1) reasonable expectation of privacy and authorized intrusiveness; (2) stigma associated with the type of authorized search and seizure (3) feasibility of a warrant; and (4) usefulness of a warrant.

Impartial and Independent Arbiter

In the **McLean Proceedings**, Mr. Riddell has admitted that he was in a solicitor-client relationship with Mr. Bussanich, a staff lawyer so there is no independence therein. It is unclear if that is any different in the Matajawa Decision because the “opinion” is not before the Court therein and not part of the record. In the McLean Proceedings, the document is titled “Privileged and Confidential”. If they are different now than then, then this distinction means that the Warrantless SSO will be set aside.

The Grounding Distinction – Reasonable and Probable Grounds

Reasonable suspicion means “*reasonable grounds to suspect*” as distinguished from “*reasonable grounds to believe*” (*Kang-Brown*, at paras. 21 and 25, *per* Binnie J., and at para. 164, *per* Deschamps J.). To the extent one speaks of a “*reasonable belief*” in the context of reasonable suspicion, it is a reasonable belief that an individual *might* be connected to a particular offence, as opposed to a reasonable belief that an individual *is* connected to the offence. Reasonable suspicion is a lower standard as it engages reasonable possibility, rather than probability of offence (see: **BOA Tab 19, para 75**). The Legislature intention is unequivocally clear by its explicit and deliberate language choice under the 1998 LPA through Bill 15.

Relevance

Records of a *personal* and *confidential nature* or that reveal a personal core of biographical information carry a reasonable expectation of privacy sufficient to attract constitutional protection (*Mills* at page 81; *Plant* at pages 292-294). This includes information which tends to reveal intimate details of the lifestyle and personal choices of the individual (*Plant* at page 293; *Tessling* at paragraph 62). **Computers**, because of the vast amounts of information they contain — including intimate correspondence, the details of our financial, medical and personal situations, Internet browsing histories, as well as information that users cannot control and information that they may not be aware of or may have chosen to discard — attract a very high expectation of privacy *R. v Vu*, [2013] 3 S.C.R. 657 at paragraphs 24, 40-45). Ss. 88(1.1) and s. 37.1 are self-evident.

Part 13: Unreviewable Orders

Members (including former members) have the right to be free from unreasonable search *or* seizure under s. 8 of the *Charter*. This includes the right of a **meaningful** review of the search and seizures authorized by the legislative sections. Stringent standards must be adopted to protect professional secrecy. This means that any legislative provision that interferes with professional secrecy more than is absolutely necessary **will be** labelled unreasonable.

Discretionary unreviewable authorizations are contrary to s. 8 of the *Charter*.

Even if one were to accede to the Legislature’s intent that they have authorized the LSBC to make rules regarding the alleged protection of the privacy and return of personal and privileged records that were “incidentally seized”, it demonstrates a flawed misunderstanding of s. 8 of the Charter. As this Court of Appeal correctly made the determination of law, the review of the legislation *ab initio* **must be correct**.

The SCC decision in *Goodwin* affirmed the decision in *Hunter* that an unreviewable discretionary legislative power would be contrary to s. 8.

Part 14: Law of Consent and Application

Law

Where the test mentions “police” or “police conduct,” the words “school **authority**” or “conduct of school **authority**” may be substituted (see: *Simon Gillies et al v. Toronto District School Board*, 2015 ONSC 1038) (see: **BOA Tab 69, TDSB**)

Mactavish J. summarized those criteria as follows in *Canada (Minister of Citizenship and Immigration) v. Jaballah*, 2009 FC 33 (CanLII), 187 C.R.R. (2d) 103, at paragraph 76 (see: **BOA Tab 68, Jaballah**)

- (i) there was a consent, express or implied;
- (ii) the giver of the consent had the **authority** to give the consent in question;
- (iii) the consent was **voluntary** ... and was not the product of police oppression, coercion or other external conduct which **negated the freedom** to choose whether or not to allow the police to pursue the course of conduct requested;
- (iv) the giver of the consent was aware of the **nature of the conduct** to which he or she was being asked to consent;
- (v) the giver of the consent was aware of **his or her right to refuse** to permit the police to engage in the conduct requested; and,
- (vi) the giver of the consent was aware of the **potential consequences** of giving the consent. (*Wills* at para. 69)

Consent, when involving *Charter* rights, is to be narrowly construed. Moreover, a consent for one purpose is not valid for another.

The cases of *Cole* (search of an employer-issued computer used for personal purposes), *R. v. Blinch* (1993), 31 B.C.A.C. 131 (search of a home where a neighbour had a key and a co-owner’s permission to let police in) and *R. v. Edwards*, [1999] CarswellOnt 3233 (ONSCJ) (search of an inner garage by building superintendent who’d “loaned” the accused her parking spot) stand for that proposition that a **third party cannot** waive the *Charter* rights of a Canadian citizen.

Where a person’s constitutionally guaranteed right to be free from arbitrary search and seizure is at issue, consent to such searches should be **narrowly construed** (see: *Harkat* (Re), [2010] 3 FCR 169, 2009 FC 659). Members **must** cooperate with authorized searches and seizures **short of violating law** (see: **BOA Tab, 9** at para 13).

The Doctoral Context

Bishop v. College of Physicians and Surgeons, 1985 CanLII 569 (B.C.S.C.) upheld at the Court of Appeal (see: **BOA, Tab 13, Bishop, para 29**)

“The demand of Mr. Beere upon the plaintiff for the production of his patients' clinical records, his day sheets, appointment book and nursing home ledger for the purpose of temporarily removing them to be copied at the offices of the defendant constituted a search and a seizure **notwithstanding** the *refusal* of the plaintiff to comply with such demand.” (see: para 29).

The doctor context is the closest to the legal context due to issues of confidentiality and privilege in the records of the professional

A member who does not cooperate with a decision from a statutory body has engaged not only professional misconduct but conduct that is “grave” (see: **2015 LSBC 06**).

Since 2012, the Legislature empowered panels to levy larger fines against lawyers (which includes former members) than previously and up to \$50,000 (see: **s. 38(5) (b)**) and greater recovery powers including filing a certificate in the BCSC which has the same effect as a judgment of the BC Supreme Court (see: **ss. 38(9)(10)**).

Arkinstall

It is trite that although the legislative provisions could conceivably contemplate the member consenting to such an intrusion (LSBC pleads that consent is required), the coercive element of the **mandatory** language along with the penal sanctions of failure to comply with statutory orders (see: *Re 2015 LSBC 6* referencing “grave”) the **Impugned Sections must** be viewed as if they authorize search, detention and seizure. *McLachlin in Bishop – 1989*

At paragraph 13, the best justice to ever come out of B.C., Madam Justice McLachlin found:

I add that I have difficulty seeing how a provision which requires members to produce records and permit copies of them to be taken upon demand is not a search or seizure under [s. 8](#) of the [Charter](#). This is a forced production of documents. The member cannot refuse, short of violating the law

Thompson – Seminal and Binding Decision

The SCC found:

Applying a purposive interpretation of [s. 8](#), the compulsory production of documents in a criminal or quasi-criminal law context falls within that definition. Whether the public authority “takes” the documents or compels the person to hand them over, the impact on the person's right to privacy in the documents is the same. Sections 17(1) and 17(4), therefore, constitute a seizure within the meaning of [s. 8](#), and this seizure is unreasonable because it does not meet the test of reasonableness set forth in *Hunter*. The possibility of an individual's challenging the s. 17 order before a judge, prior to giving up possession of the documents, either by way of an application for review or by way of s. 17(3) does not meet the concerns underlying the *Hunter* criteria

Part 15: Section 8 violation fails under Section 1

The phrase “demonstrably justified” puts the onus of justifying a limitation on a right or freedom set out in the *Charter* on the party seeking to limit said right. It is trite that it is on the AGBC and LSBC respectively in each of the respective proceedings.

This point can be disposed of rudimentarily. In *Lavallee*, the Court wrote that “if, as here, the violation of [s. 8](#) is found to consist of an unjustifiable impairment of the privacy interest protected by that section, everything else aside, it is **difficult to conceive** that the infringement could survive the minimal impairment part of the *Oakes* test” (para. 46). This applies to not only the type of records (as noted by the SCC in Branch) but also the location.

Part 16: Damages

Justice Grauer found and it was not disbursed on any appeal:

[69] The third question is whether, assuming that the Law Society had jurisdiction to grant the order and did not act improperly in doing so, the Law Society nevertheless carried out the order in a manner that constitutes an unreasonable search and seizure. This turns primarily on the question of consent.

[70] The third question is one that could indeed be the subject of a civil action for damages, but I am satisfied that it is not one that can be decided on this application

Application of the Law to the Facts

There is no dispute that the LSBC’s admissions and concessions are as follows:

1. The signature of the lawyer is required for consent of the lawyer; and
2. If the lawyer does not consent at first instance, then the LSBC is required to leave, and proceed to attempt to obtain an order under section 37 of the LPA in accordance with that standard which is: (1) reasonable and probable grounds under oath; (2) before a justice (independent); and (3) relevance.

The issue between the **DOJ Judge** and this matter is that the issue of Rule 3-5.01 is before the Court in the McLean Proceedings where it was not on the former. Rule 3-5.01 (now Rule 3-6(1)) gives the power to the **Discipline Committee**:

Failure to produce records on complaint investigation

3-6 (1) Subject to subrules (2) and (3), a lawyer who is required under Rule 35 *[Investigation of complaints]* or 4-55 *[Investigation of books and accounts]* to produce and permit the copying of files, documents and other records, provide information or attend an interview and answer questions and who fails or refuses to do so is suspended until the lawyer has complied with the requirement to the satisfaction of the Executive Director.

The LSBC has also admitted that there is a distinction between the client's of a lawyer and the member if he or she has counsel, and his or her right to privilege. The LSBC had knowledge, with ongoing proceedings, that Mr. McLean had privileged documents with his counsel and firm in Mr. Hira at Affleck Hira Burgoyne.

Intentional violations of the law command punitive damage. Further, taking inconsistent positions between proceedings commands special costs. Moreover, the

To apply the legal test against the LSBC's standard for consent to June 3, 2014:

1. Mr. McLean did not provide any consent express or implied as admitted by the LSBC from June 3 to June 4 2014; and
2. As admitted by the LSBC in documentary evidence, the LSBC was then required to leave and obtain a court order under s. 37 of the LPA.

Therefore, the LSBC breached its own requirement to obtain the authorization by way of signature of Mr. McLean and leave the office when it knew, as admitted, that it was not authorized to be in the office. Therefore, without question the conduct from June 3 to June 4, 2014 was an unlawful search or seizure.

Even if one could consider "consent", which could not comply thereafter, then it would not need your standard requirement of a signature of the Acknowledgment Form and any other part of the test:

- (i) there was a consent, express or implied;
- (ii) the giver of the consent had the **authority** to give the consent in question;
- (iii) the consent was **voluntary** ... and was not the product of police oppression, coercion or other external conduct which **negated the freedom** to choose whether or not to allow the police to pursue the course of conduct requested;
- (iv) the giver of the consent was aware of the **nature of the conduct** to which he or she was being asked to consent;
- (v) the giver of the consent was aware of **his or her right to refuse** to permit the police to engage in the conduct requested; and,
- (vi) the giver of the consent was aware of the **potential consequences** of giving the consent. (*Wills* at para. 69)

Ergo, you treated me differently than you treat others which commands the highest form of damages because then the decisions and conduct are arbitrary. Every day that passes with this **Matajawa Decision**, and your concessions on the record mean damages continue to increase.

Part 17: Conclusion and Optics

Unreviewable and Administrative Decision – the Matajawa Decision

It is the binding court orders that separate my matters from your current practice.

Binding Decision

Since Mr. Justice Grauer's relevant orders are binding and has not been set aside, I am apparently now the only person with the power to obtain judicial review of the Warrantless SSO. Justice Grauer found that it was a statutory power of decision, as did a Hearing Panel, and it could be the subject of damages if consent was invalid and it was improperly carried out. There was no legal consent and it was improperly carried out by your own admission.

However, it gets worse for the LSBC and much worse. If the Rule 4-55 Orders are the same, you have now submitted that they are unreviewable and the Court has agreed but I have a court ordered ability to obtain judicial review under the new law of Vavilov with no deference.

The Legal Bases

Mr. King will need to attend to amending the Court record with the Court of Appeal in more precise and legal fashion. In case he was unaware of the principles, I will cite them again:

1. The comprehensive and legal principles from the reported cases when making submissions to the Court or the LSBC is as follows:

Requirement at First Instance

- a. Lawyers are officers of the court and **must** discharge their duties as officers of the court;
- b. Upholding the duty to the court is one of the most three (3) most serious responsibilities;
- c. The LSBC is not required to find intentional misconduct, misleading or misrepresentation.
Rather, the LSBC (Discipline Panels) find professional misconduct for any of the following reasons:
 - i. The Law Society **must** demand that lawyers are forthright and honest in **all** their dealings (not just some or those that they may subjectively consider relevant or material). If a lawyer is not honest in **all** of their dealings with the Court, then professional misconduct will be found;
 - ii. Court **must** be able to accept statements of counsel without having to make further inquiry;
 - iii. There is no room for the following:
 - iv. a cavalier attitude;
 - v. sloppy practice; or
 - vi. dishonesty;
 - vii. The lawyer's submission **must** reflect the actuality. Any departure is an assault on the integrity of that system and will result in a finding of professional misconduct;

- viii. The Lawyer has an unequivocal obligation to take care to be truthful in **all** written and oral representations to the Courts (and the Law Society). If she does not take care to be truthful, then it is professional misconduct;
 - ix. A lawyer **cannot** rely on her own carelessness or negligence to the benefit of herself and/or the client. If she does, then it is professional misconduct;
 - x. A lawyer **cannot** display a casual disregard for the truth. If she does, then this amounts to a professional misconduct; and
 - xi. A lawyer **must** have sufficient information to be able to assert the facts submitted orally or in writing. If not, then it is professional misconduct; and/or
 - xii. If a lawyer **fails** to take the necessary degree of care to verify that her statements were accurate, then it is professional misconduct.
2. It is trite that when a lawyer has not discharged his or her obligation to take care that all of his or her statements were truthful to the LSBC or Court, he or she has an obligation to correct it or them without delay.
 3. Botting is binding upon the LSBC with respect to the conduct of Ms. Bevan.
 4. Vlug cited Botting. In *Law Society of BC v. Botting*, 2000 LSBC 30, the citation before the hearing panel alleged misrepresentations to the court and to the Law Society. The panel held at paragraph 60:

While there is no specific prohibition in the Canons or the *Handbook* this Hearing Panel has no doubt that a lawyer has an obligation not to make misrepresentations to the court or the Law Society. Clearly, the justice system would fall into dispute and the ability to properly regulate the members of the profession would be seriously compromised if members did not have an unequivocal obligation to take care to be truthful in all written and oral representations to the Courts and the Law Society.

5. In Botting, the hearing panel found that Mr. Botting, in making misrepresentations to the court and to the Law Society, was negligent and reckless and displayed a casual disregard for the truth. The hearing panel found that his conduct constituted professional misconduct and ordered that he be suspended for 90 days.

Assessing the Truth of One's Statements

6. The law is well-settled in this area and the same factors are looked to by the LSBC as the courts such as inconsistency of statements; inconsistency of past and subsequent conduct;
7. The distinction between credibility and reliability was summarised by Watt J.A. in *R. v. H.C.*, 2009 ONCA 56, at para. [41](#):

Credibility and reliability are different. Credibility has to do with a witness's veracity, reliability with the accuracy of the witness's testimony. Accuracy engages consideration of the witness's ability to accurately

i. observe; ii. recall; and iii. recount events in issue. Any witness whose evidence on an issue is not credible cannot give reliable evidence on the same point. Credibility, on the other hand, is not a proxy for reliability: a credible witness may give unreliable evidence: *R. v. Morrissey* (1995), [1995 CanLII 3498 \(ON CA\)](#), 22 O.R. (3d) 514, at 526 (C.A.).

The same would be applicable to the LSBC in the McLean Proceedings or the alternative is addressed above.

[REDACTED]

On the disbursements alone and time spent, it is a very reasonable and fair offer considering the recent developments and admissions, and extreme risk for the LSBC and AGBC. This is not a waiver of any my rights and I remind you of your professional obligations to advise and only act on lawful instructions.

I shall presume that the Formal Offer is capable of acceptance should I not hear from you. If you need clarification, kindly request the same.

Should you wish to counter, kindly provide a counter offer to this email. Since Ms. Lockhart and Ms. Bevan were in regular dialogue, I trust that they can work together or with Mr. King, new counsel to the file. I am content to entertain intellectually stimulating and productive dialogue about the facts and law in a dispassionate manner. However, if not, then I have tried and I reserve the right to take any legal route that I see fit.

After which time, I will tender the relevant affidavit material along with this into a demand which will require to admit, as called members of your society, to turn over the documents you obtained without legal consent and without consent under your admitted practice.

My goal remains to be resolution based and move forward and I presume you do as well. As such, the demands will remain extant and I will continue to make them in the interim but they can be justifiably ignored if the **Formal Offer** is accepted.

It should go without saying that much of the above would be excellent fresh evidence to tender in any of the Proceedings and I will provide notice of the same to Mr. King and Ms. Lockhart of the same.

While the amount of correspondence and communications that I have been receiving regarding the Vavilov decision and now the Matajawa Decision certainly indicates a lot of passion for the issue and many wanting me to obtain some of monetary award or public embarrassment by way of reported decision, I simply see this as a matter of facts and law. I do not view this through a “win-loss” prism. To be clear, I am not seeking any reinstatement to the practice of law by this letter. I will be entitled to do as I see fit. I do find it kind of interesting that there is so much passion and venom on both sides of the ledger as I do not see any “bad blood” but apparently many have their opinions. The underlying essence is that the facts and what I underwent have a full evidentiary record and you have lawyers not even wanting to put their name to a case. I will always stand behind my name and what I think is right.

My goal is to live my dream abroad and see the world and revel with those in joy, harmony and happiness. It appears your goal is bringing the regulation and red tape to those that apparently need and deserve it albeit by the empowering LPA, certain LSBC Rules, and certain conduct – which appears to vary by member.

In essence, we can all move forward on terms that are beneficial to both – in essence, hard fought litigation has led to certain decisions that are cited and guiding the court. You now have a decision in the Matajawa Decision, which is largely inapplicable to my facts, but certainly beneficial if you can have it affirmed at the BCCA. However, I certainly can use the admission by the LSBC to my advantage. If it does stand, then I am the only person that stands between the LPA and LSBC regime (where applicable) to have a warrantless search and seizure order found to be an administrative and unreviewable decision.

Certainly, I should have been much more thankful to Mr. Justice Grauer and Madame Justice DeWitt Van-Oosen for their binding and unappealed findings. I certainly do not have an “administrative decision” that is unreviewable because it was court ordered to be judicially reviewed with much different facts but nonetheless, it appears to be quite a decision to assist the LSBC. Certainly, that could change very quickly if I move the LPA Petition or any other matter forward. It appears that there were some procedural mistakes and strategic ones that will undoubtedly benefit the LSBC at the BCCA. I do not intend to castigate counsel or “A Lawyer”, as I know him to be very erudite, and I do not have the facts as they are sealed (and perhaps quite a different LSBC warrantless search and seizure practice) but those findings are of remarkable significance to the LSBC. It also appears that there is a money laundering issue with that lawyer so perhaps the strategy is based upon avoiding the materials being disclosed considering the risk to that lawyer and the law firm.

As a sidebar, that was very bold move to bring the warrantless search and seizure order to the law firm right after he or she was coming off a two month consensual suspension. Perhaps, I should be thanking you for your “patience” with me.

The LPA speaks for itself. The LSBC Rules do as well. The recent admissions (and all previously) are self-evident. Fairness, justice and measured conduct are important considering the cost-benefit analysis. The admissions noted above are binding and cannot be reversed or amended.

I like to keep it up front and honest with you in that there have certainly been requests from various firms to inquire into my status which is what it is. However, the Formal Offer takes that into consideration as well. However, if the Formal Offer is not accepted, I will certainly focus my efforts on securing not only a win for the public but for myself and I may then entertain returning to law in some form with a properly authorized application to a law society or bar but that is merely a hypothetical. However, it would invariably be in a different country. Perhaps, it is where I belong at the home of law delving into the intellectual issues like a young Socrates.

I will say and extend my thanks to Ms. Bevan for providing me with that fax whereby a person criminally impersonated me (according to Ms. Bevan) and delivered a fax to a governmental body in such fashion. I trust you are already aware of the benefit to me of knowing the actual identity of that person and subsequent investigation. Suffice it to say, it will not be particularly helpful to the LSBC considering it is unfortunate tandem with said fraudster there and historically. It goes without saying, as a term of the Formal Offer, I would not challenge any of those orders that were procured with “his evidence” but if not, one can only imagine the detriment of bringing that fresh evidence.

I intend to keep it confined to justice in that relevant realm as that type of conduct of criminally impersonating me and sending materials to the AGBC is a person that should be prosecuted to the fullest extent of the law. You can discuss the matter with Ms. Bevan as she has said file but it is certainly a factor that militates in favour of settlement and acceptance of the Formal Offer.

That being said, I have prepared this Formal Offer in a little less than 60 minutes so it should give some understanding of the now well-organized file, facts, issues, legal arguments.

I cordially remind you of your professional obligations and if a phone call is easier to discuss on a without prejudice basis, I welcome it.

If not, the Formal Offer is in your hands to obtain instructions jointly or separately.

However, I will, out of an abundance of caution, have the relevant sworn evidence prepared and relevant demands drafted and ready to be tendered or tendered on a “with prejudice basis”. There are a few points of additional legal citations that I may add to this but it will not reduce from the substance or your ability to convey acceptance to the Formal Offer.

Where parts are irrelevant to the LSBC or AGBC, you may ignore them but trust you are able to work together for the betterment of the persons and relevant members.

If the Formal Offer is accepted, you may ignore the privacy requests and the duty to correct the court record. However, the corollary is that if not, then there is much correction and disclosure for you to do in your respective and applicable capacities.

I think the decisions have proven to be fruitful and we can both walk away with a level of courtesy and respect and mutually benefit while the public has already definitely benefitted from this intellectual debate and citing of decision.

Thank you in advance.

SENT OF BEHALF OF THE UNDERSIGNED

Per: 

Kevin A. McLean, B.A., J.D., CIM

KM/dsw

WRITTEN ARGUMENT AT COURT OF APPEAL – TENDERED TO MR. OUTERBRIDGE

FORM 21 (RULE 40 (1) (A))

COURT OF APPEAL FILE NO. 45786

COURT OF APPEAL

BETWEEN:

KEVIN A. MCLEAN

APPELLANT
(Petitioner)

AND:

ATTORNEY GENERAL OF BRITISH COLUMBIA

RESPONDENT
(Respondent)

APPELLANT'S SPEAKING NOTES

**CROSS REFERENCED TO THE FILED APPEAL RECORD ("AR"), APPEAL BOOK ("AB"),
APPELLANT'S FACTUM ("AF") and Authorities ("BOA")**

SOLICITOR FOR THE APPELLANT:	SOLICITOR FOR THE RESPONDENT:
Kevin A. McLean (B.A., J.D., CIM) Former Barrister and Solicitor Chartered Investment Manager 5240 56 Ave #200, Surrey, BC V3S 5K7	ATTORNEY GENERAL OF BRITISH COLUMBIA PO BOX STN 9280 STN PROV GOVT 1001 DOUGLAS STREET, VICTORIA, BC, V8W 9J7 ATTENTION: MR. DAVID EBY, MS. SARAH BEVAN AND MR. ALEXANDER DUTTON

Part 1: CORRECT LEGAL TEST and QUESTIONS OF LAW

1. The chambers justice found that the issues of law transcend the appellant and engaged questions of national and public importance that remain unanswered (see: **AR, page 57**). They still do and the AGBC has not filed acrossappeal within the statutory timeline (see: *Court of Appeal Act*, s. 15). This argument is served as courtesy to the Respondent and potential intervenors to arrive at the appropriate time estimate for the hearing of this appeal.
2. The chambers justice applied SCCR 9-5 to find that the petition was “unnecessary” and an “abuse of a process”. She relied on three authorities in doing so: *Kikla*, *Quinn* and *CUPE*. None of those disclose the same facts to the facts in this appeal and were not binding upon her (see: **AF, pages 3 to 5**).
3. The chambers justice misstated that the appellant did not tender the historical versions of the *Legal Profession Act* before her when the appellant had them tendered by way of court agent at 9:50 a.m on October 30, 2018 (see: **AR, pg. 58; Appeal Book, pages 96 to 101**). The appellant will provide an affidavit in this proceeding. The previous iterations and relevant excerpts were also specifically and expressly cited in the appellant’s written arguments (see: **AB, pages 181 to 224**). Ergo, her findings are based on false premises.
4. The questions are specifically about the correct legal tests for each distinct legal issue (see: **BOA, Tab 1 at para. 72**). The standard of review is **correctness**.
5. The SCC has found that the standard of review of a law society rule is reasonableness (see: *Green v. Law Society of Manitoba*, 2017 SCC 20). This BCCA made the following determination of law in the damages action against the LSBC and others (see: **BOA, Tab 22, para. 27**):

Most frequently the **decision** of a **decision maker** subject to judicial review, including as to the meaning of its home statute, will be assessed on a standard of **reasonableness** whereas a **court interpreting legislation** must be **correct**.
6. The Legislature has authorized this Court to make any order that could have been made in the lower court, give any additional orders it considers just, and along with making inferences of fact (see: *Court of Appeal Act*, R.S.B.C. 1996, c. 77, s. 9).

Part 2: THE CHALLENGE IN FIRST INSTANCE: Constitutional Validity of Statutory Provisions versus the exercises of statutory power

7. The **correct legal test** to determine whether there must be a challenge to the empowering parent statutory scheme or provision versus the exercise of statutory power to make a regulation *or* render a decision was formulated in *Slaight*. Rothstein J. applied the legal test from *Slaight* in *Information Commissioner* (see: **BOA, Tab 2 at page 13**). When considering guaranteed and protected rights, the legal test applies in three (3) scenarios with respect to the Legislature’s choice of language: (1) **no discretion**; (2) **precise discretion**; and (3) **imprecise discretion**.
8. Where the legislative language confers *no statutory power* of discretion on the statutory body, the challenge **must** be to the statutory provision or scheme. This applies to ss. 88(1.1) and (1.2) as there is no discretion therein but rather **obligations** upon persons to produce confidential records for seizure and a conclusory statement of law. The same can be said with respect to the absence of review or appeal under the disciplinary search and seizure scheme.
9. Where the Legislature has conferred a statutory power upon the statutory body but that confer of discretion *to limit* the assumed protected and guaranteed right is *precise*, the attack **must** be on the constitutional validity of the statutory provision. This applies **to ss. 36(d)** as the Legislature has conferred a precise discretion on the statutory body (LSBC benchers) *to make rules* requiring a member to cooperate with investigations and examinations under the preceding two subsections which include producing records and ‘*other evidence*’ upon request. This also applies to **ss. 36(a)** as the Legislature has been unequivocal in the statutory power of discretion that it has conferred upon the statutory body. The Discipline Committee serves its various functions ‘*at the pleasure*’ of the LSBC benchers. This also applies to **ss. 36(b)** as the Legislature has conferred a statutory power upon the statutory body to authorize discipline investigations within a framework that requires little or no discretion.
10. Section 37.1 confers a statutory power upon the society *to collect* (different than a demand) personal information *unrelated* to the investigation or examination but must return that information *if* and as soon as practicable or destroy said records. The discretion is **precise**. Section 36(i) confers a statutory power upon the statutory body that is imprecise but that imprecise discretion expressly confers the power **to limit** the *Charter* rights of members.
11. Aside from the *ad hominem* attacks of the AGBC, he argued in the lower court that “the petitioner [appellant] has articulated *no reason* why any of the “**Impugned Sections**” should be interpreted as conferring, expressly or by necessary implication, **power** on the part of the benchers of the LSBC **to enact** rules that are in violation of the *Charter*.”

12. This is false as the appellant certainly articulated reasons. When reading the **Impugned Sections** together, as they reference each other expressly or by implication, they authorize LSBC to demand production upon members (current or former) of records and “other evidence”, which is not required to be in the possession of the member, *to make copies* of those records which may be irrelevant, confidential, or ‘subject to a solicitor-client privilege’. The Legislature authorizes the statutory body *to delegate* any all responsibility and authority under the entire Part 4 to the Discipline Committee but for rule making. The Legislature authorized the statutory body to authorize discipline investigations upon the standard of ‘reasonable suspicion’ under ss. 36(b). The Legislature authorized the statutory body *to collect* personal information under ss. 37.1 as per the Legislature’s **unequivocal** language and confirmation in the “**Explanatory Notes**” of its own website (see: **AB, 9 to 14; 139 to 149**). The Legislature deliberately chose its language in **excluding** members with a right or review or appeal under s. 47 and 48 when they have been served with an authorized discipline investigation order. It is a misinterpretation of the constitutional analysis.

PART 3: PARAMOUNTCY: The Unequivocal Fundamental Principles

13. A statutory regime **prevails** over principles of natural justice. Where the intention of the legislature is **unequivocal**, there is *no room* to import common law doctrines of natural justice and independence (see: **BOA, Tab 3**). It is *not open* to a court to apply a common law rule in the face of clear statutory direction. Courts engaged in judicial review of impugned exercises of statutory power *must defer* to the **legislator’s intention** in assessing the degree of independence required of the tribunal in question (see: **BOA, Tab 3**).
14. There is no deference when reviewing legislation *ab initio*. Courts engaged in judicial review of impugned legislation, the court **must hold a law** invalid if it is inconsistent with the *Charter*. Where a provision is declared unconstitutional pursuant to s. 52 of the *Constitution Act, 1982*, that will be end of all matters that involve that question of law (see: **BOA, Tab 6, at page 711**).
15. The Merriam Webster’s Dictionary defines “**at the pleasure of (someone)**” is used to say that *something is done or can be done* because *someone wants it* to be done. In *Ocean Port*, the SCC found that ss. 30(2)(a) of that regulatory legislation, where the chair and members of the Liquor Appeal Board ‘served at the pleasure’ of Lieutenant Governor in Council, was **unequivocal** of the Legislature’s intention (see: **BOA, Tab 3**).

Application of the legal test to the facts

16. The Discipline Committee serves its various roles of authority and responsibility at the pleasure of the **LSBC benchers**. If the LSBC delegates their authority and responsibility, it can be done because the LSBC wants it to be done. Ss. 27(f) confirms that the LSBCDC is established under ss. 36(a). Section 47(3) authorizes to the LSBCDC to apply for a review of decisions under ss. 38(4), (5), (6), (6.1) or (7). This is also combined with the repealing of the prohibition against a person, who had participated in the issuing of a citation, to sit on a panel or review board (see: *1996 LPA*, ss. 43(2)). The Legislature’s intention is unequivocal.

17. The LSBC website states that the Discipline Committee engages in (i) reviewing complaints; (ii) instructing staff to make further investigation; (iii) ordering conduct reviews; and (iv) issuing citations. In practice, members of the LSBCDC go much further than the LSBC represents to the public. This omission to the public amounts to a misrepresentation.
18. The LSBCDC passes on the appropriateness of the warrantless searches and seizure authorizations against members granted under the statutory power of **s. 36(b)**. From 2004 to 2018, the LSBCDC granted **88** of such authorizations in relation to 88 applications made by the LSBC (see: **AB, 106 to 111**; and **122 to 138**). In practice, the order, granted by the Chair of LSBCDC, cites the member's obligations pursuant to ss. 36(d) and ss. 88(1.1) along with the *Code of Professional Conduct*, Chapter 7, in being required as a matter of law and professional obligations to produce solicitor-client privileged records regardless of such privilege (see: **AB, page 90**). Certainly, a member is a person and if a lawyer has retained counsel, his records with that lawyer are producible. Ergo, a member is faced with breaching her professional obligations or a forced waiver of privilege.
19. Factually, members of the LSBCDC have and continue to sit on hearing panels and review boards to adjudicate the alleged professional misconduct of members (see: **AB, pages 175 to 180**). Literally, there were **55 instances** where a member of the LSBCDC sat on a hearing panel to render a decision against a member (see: **AB, *ibid***). The issue is not the appellant attacking the LSBC's actions, as the chambers judge suggests, but a constitutional challenge to the Legislature's unequivocal intention to authorize the overlapping of functions for the Discipline Committee. From a constitutional perspective, it is whether the Impugned Sections are correct *from the start*.

PART 4: FAIR HEARING: Unqualified and Independent Right

20. The right to a hearing before an independent and impartial tribunal has been found to apply *outside* the criminal context (see: *Ruffo v. Conseil de la magistrature*, [1995] 4 S.C.R. 267 at para. 38; and *Pearlman v. Manitoba Law Society Judicial Committee*, [1991] 2 S.C.R. 869, at 883). It is an integral part of the principles of fundamental justice protected by [s. 7](#) of the *Charter*.
21. A reasonably informed bystander *could* perceive bias on the part of adjudicators of professional conduct when they are also members of the investigatory and prosecuting arm of the same body in the same year. The learned chambers justice found that allowing such a petition of issues of public importance would violate the integrity of the administration of justice. Contrary to such a finding in favour of her former client's submission, the SCC has consistently found whether appearing before an administrative tribunal or a court of law, a litigant has a right to expect that an impartial adjudicator will deal with his or her claims. The *perception* of impartiality remains essential to maintaining public confidence in the justice system. It is a matter of integrity.

22. The appellant spent hundreds of hours reading every single discipline decision from 2003 to 2018. He then cross-referenced the composition of the LSBC each year against whether members of said committee sat on a hearing panel to adjudicate the professional conduct of a member *in the same year*.
23. The LSBC, in response to requests for records under applications served on them in this proceeding, misunderstood the nature of the allegation. The allegation is not levelled at the *Law Society rules* at first instance or allowing members of Discipline Committee to sit on hearing panels in adjudication that *they themselves authorized*. The LSBC relies on Rule 5-4 that disqualifies a person who participated in the decision to authorize a citation from serving on a panel in respect of *that citation*. Ironically, LSBC Rule 5-4 is virtually verbatim to the former section 43(2) under the *1996 LPA*. The Legislature unequivocally did not include a similar section under the *1998 LPA* along with passing ss. 36(a). The issue remains the constitutionality of the impugned empowering statutory provisions and scheme. Disciplinary hearings are similar to court hearings and are open to the public (see: **AB, page 119**). Those that are primarily adjudicative in their functions will be expected to comply with the standard applicable to courts: there must be no reasonable apprehension of bias with regard to their decision. In the spirit of judicial economy, it would be wasteful to even further discuss whether members charged with investigative and prosecutorial under the relevant statutory scheme are able to act in judicial capacity under s. 7 or s. 8.

PART 5: APPROPRIATE REVIEW MECHANISM: The Constitution Act, 1982: PART VII, Section 52 versus PART I, s. 24(1)

24. S. 52 provides an **explicit basis** for judicial review of legislation in Canada, for, whenever a court finds that a law is consistent with the Constitution of Canada, the court **must** hold that law invalid i.e. of *no force and effect* (see: Hogg, 3.4, page 54). When an order of invalidity is made against a legislative section that *ends the matters* in that a particular litigant cannot then also obtain s. 24 damages. Moreover, in a civil proceeding, the entity relying on the law will **lose** the legal bases for their case (see: Hogg). The purpose of s. 8 is **preventing** unjustified searches and seizures before the happen.
25. In practice, the LSBC cites ss. 88 and provides the wording of the enactment during the administrative search and seizure processes as they did against Mr. *Mulgrew* and Mr. McLean (see: **AB, page 46**). Mr. Wedel's affidavit in *Mulgrew* that he did not intend or anticipate, albeit contrary to the demand he authored that cites ss. 88(1.1) when he forced upon Mr. Mulgrew and Vancouver Sun, would capture any material subject to solicitor-client privilege (see: **BOA, Tab 11, para 14**) is irrelevant. Whether the public authority 'takes the documents' or compels the person to hand them over, the impact on privacy is the same.

PART 6: DISCIPLINE PROCEEDINGS and PROFESSIONAL OBLIGATIONS: What Doctors and Lawyers CANNOT do - 'cannot not consent'

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26. Discipline proceedings are **quasi-criminal** (see: **BOA, Tab 7 at paras. 26 and 27**). Members **must** cooperate with authorized searches and seizures **short of violating law** (see: **BOA Tab, 9** at para 13). A member who does not cooperate with a decision from a statutory body has engaged not only professional misconduct but conduct that is “grave” (see: **2015 LSBC 06**). Since 2012, the Legislature empowered panels to levy larger fines against lawyers (which includes former members) than previously and up to \$50,000 (see: **s. 38(5) (b)**) and greater recovery powers including filing a certificate in the BCSC which has the same effect as a judgment of the BC Supreme Court (see: **ss. 38(9)(10)**).
27. Mr. Justice Butler found that a non-member, like Mr. Mulgrew under s. 26, did not face any **quasi-criminal** aspects. The same cannot be said for search and seizure authorizations under s. 36 of the *LPA*. Further, Mr. Justice Butler found that if a non-member like Mr. *Mulgrew* refused, any **contempt hearing** under s. 26 would necessarily be reviewed, “it is well established in British Columbia that, on a regulatory body’s application to court to enforce a subpoena it has *issued*, the court will entertain argument about the necessity or reasonableness of the subpoena, or indeed about the **validity of the legislation** under which it was issued.”

PART 7: UNDECIDED LIVE SUBJECTS UNDER S. 8 OF THE Charter

(a) Searches and/or Seizures of Records ‘SUBJECT TO Solicitor-Client Privilege’

28. In April 2005, Madam Justice Gerow dismissed Mr. Greene’s petition for a declaration that s. 27 (2) (b), (c), (d), (e), (f) and 27 (3) unnecessarily infringed the privacy rights and solicitor client privilege of clients with their lawyers under s. 8 of the Charter. His argument also expressly challenged the *previous construction* of ss. 88 prior to the 2012 *LPAA*. Her Ladyship found no merit in such argument as she relied heavily on the fact that a practice review is not disciplinary in nature and on s. 89 of the *LPA*. S. 89 was repealed under the 2012 *LPAA* (see: **BOA, Tab 9**). The AGBC cited *Merchant* in support of its response to the challenge to ss. 88(1.1) and (1.2) that compel all persons to produce solicitor-client privilege records regardless of the privilege. The unanimous appellate SKCA found that *Greene* and another case (see: *Stewart McKelvey Stirling Scales v. Barristers Society*) cited by the AGBC were not helpful to the Law Society of Saskatchewan because the reasoning of the courts in both ultimately turned on the specifics of those provincially enacted statutory schemes (see: **BOA, Tab 10 at para. 35**).
29. While Mr. Justice Butler declined to rule on the issue of the LSBC’s reliance on ss. 88(1.1) in compelling a non-lawyer, Mr. Mulgrew, to produce solicitor-client records for searches and seizures by the LSBC, on the grounds of mootness. However, he noted the significance of such a provision for members of the profession (see: **BOA, Tab 11, para 87**).

30. In the summer of 2016, the SCC released its decision in *Chambre* where the notaries association in Quebec started a declaratory proceeding against the AGC with respect to the federal *Income Tax Act* that required production of records of their clients. The *Barreau du Québec* joined as an intervener for the purposes of having any of the impugned provisions declared unconstitutional with respect to its members. The Superior Court of Quebec ruled in their favour. The Court of Appeal found that pursuant to s. 52 of the *Constitution Act*, 1982, that ss. 231.2(1) and 231.7 were unconstitutional and of no force or effect with respect to Quebec notaries and lawyers for all information and documents protected by professional secrecy. The AGC appealed and its appeal was dismissed. Ss. 231.2 requires persons, who were served personally or by registered mail, to produce any information or document within a reasonable time stipulated by the notice related to the administration and enforcement of the *Income Tax Act*. Section 231.7 was the “Compliance Order” section where the Minister could apply to a judge for an order that the person provide access to the records sought under ss. 231.2. Section 231(1) carved out an exception to solicitor-client privilege namely the “accounting record of a lawyer” exception (see: **BOA, Tab 12**).
31. In finding these sections unconstitutional when measured against s. 8 of the *Charter*, the SCC found so for the following reasons: *no notice* given to the client; *inappropriate burden* placed on the notary or lawyer; compelling disclosure is *not absolutely necessary*; and no measures have been taken to help mitigate the *impairment* of professional secrecy.

Application of the Law to the Facts

32. The significant issue of the unconstitutionality of ss. 88(1.1) and (1.2), which were not enacted in *Greene* and not tested in *Mulgrew* generally or in relation to members of the profession, is now before the court. The LSBC practices in using in s. 88 (1.1) against members and persons are self-evident. For convenience purposes as the chambers justice neglected to even deal with the constitutional issue despite acknowledging *Mulgrew*, the AGBC’s argument was as follows in relation to ss. 88(1.1):

Given its status as substantive right fundamental to the proper functioning of the legal system, solicitor-client privilege **cannot** be set aside by inference, but only by legislative language that is clear, explicit and unequivocal (see: *Alberta (Information and Privacy Commissioner) v. University of Calgary*, 2016 SCC 53 at para. 28.) In s. 88(1.1) of the *LPA*, the Legislature **has used** such express language, in furtherance of the LSBC’s regulatory function. Absent the specificity of language in s. 88(1.1), search and seizure powers *elsewhere in the legislation* would be interpreted as not extending so far as to authorize access to solicitor-client privileged material.

33. The provision is clear. While legislative history is not determinative, it provides supporting context where the language is *already clear*. As Madam Justice Gerow correctly stated under the former s. 89, “s. 89 provides a procedure where if a client or a lawyer objects the document is sealed without inspection or copying and **cannot be disclosed to the Society** without the authorization of the client or by court order.” (see: **BOA, Tab 9 at para 51.**) She further found that s. 89 ensured minimal important of privilege and confidentiality by providing that documents would be sealed **without inspection or copying**. Those abolished rights of a lawyer under s. 89 only

applied to search and seizure orders made by the PSC under s. 27, hearing panels under ss. 41(2)(b), and judicial search warrants under s. 37 of the *LPA*. The lawyers' rights to object to the LSBC's accessing the record during disciplinary investigation proceedings, which authorized search and seizure of records which were *relative to one's practice* and within their possession, were **abolished** under the *1992 LPA* by Bill 75. Mr. Gomery, QC, as he then was, forcefully submitted to Madam Justice Gerow in May 2015 that the Legislature **reversed** Gardner (see: **AB, 104**).

34. The AGBC's argument has contained no merit in relation to the appellant's challenges to the **Impugned Sections** of the *LPA since 1992* and contains **no merit** in relation to search and seizure powers elsewhere in the legislation since 2012. The SCC in *Lavallee* stated, "if, as here, the violation of s. 8 is found to consist of an unjustifiable impairment of the privacy interest protected by that section, everything else aside, it is difficult to conceive that the infringement could survive the minimal impairment part of the *Oakes* test" (see: para. 46).

Perhaps, there would be an interesting legal debate about "minimal impairment" if the Legislature had kept s. 89 (or s. 42 as it was under the 1987 *LPA*) and included the right to the lawyer required to provide records under ss. 36(d) (like the language was for a lawyer required to provide access to records under section 27(2)(c)). However, that would require a hypothetical academic debate about the *LPA* pre Bill 75. This Court of Appeal stated correctly in *Gardner*, "If the committee resolution in this case had been **limited** to ordering an audit of Mr. Gardner's books and accounts, and if that had been all that was undertaken, there could not, I think, have been a successful challenge." The obvious issues are inescapable: are the Legislature's myriad and succession of deliberate changes since the decisions in *Gardner*, which Mr. Justice Butler found gave the LSBC greater ability to investigate lawyers, inconsistent with section 7 and/or 8 of the *Charter*?

(b) UNAVAILABLE and INADEQUATE Review: Whether the Impugned Legislative Scheme is Unreasonable

35. The SCC has confirmed the availability, meaningfulness and adequacy of review with respect to a search and seizure authorization is analyzed under s. 8 (see: **BOA, Tab 13** at para 75). Such analysis does **not** look to the particular actions of those administrative actors that apply, grant and execute administrative search and seizure orders but rather it looks to the more fundamental issue: *whether law authorizing warrantless searches and seizures is reasonable?*
36. Under the scheme of the *LPA*, the authorized discipline investigation or examinations under s. 36(b) and (c) is *neither* a decision of a panel under ss. 22(3) or 38 so there is no legislative right of review under the *LPA* (see: **LPA, ss. 47(1)**). The only legitimate question is whether the lawyer, subject to the discipline investigation or examination under ss. 36, is a 'respondent' for the purposes of s. 48 of the *LPA*. Respondent is a person whose conduct or competence is the subject of a hearing or an appeal under the *LPA* (see: *LPA*, ss. 1(1)). The Legislature has used the word "**hearing**" 42 times under the *LPA* (see: 1(1); 19(2)(c), (3), (4); 22(1)(2)(3)(6);

36(f); 38 (heading),(1), (2), (4); 39(1); Part 5; 41(b); 42(a), (b), (2); 43(1),(2); 44(2), 43(c), (4)(a), 5(c); 45.1(1), (3)(b), (4), (9); 47(5); 66(8)(a); 83(b)(i), (ii); 87(1), (4), (5); and 88(3) and (5). The Legislature has the phrase “conduct or competence” on five occasions (see: **1(1); 26(2); 36(e), (f); and 38(3) (b)**). The word “hearing” and “conduct or competence” appear in two subsections which are ss. 36(f) and 38(3)(b) which relating to *authorizing the ordering of a hearing* into the conduct or competence of a lawyer by issuing or a citation and the panel must give written reasons for its determination about the conduct or competence of the respondent respectively. Ergo, current and former members do not have any review or appeal under the impugned warrantless search and seizure scheme. On this ground alone, the legislative provisions under s. 36 authorizing search and seizure are unreasonable. This is not “an unsupported hypothesis of enthusiastic counsel” but selfevident legislative facts and uncontroverted facts that require rudimentary statutory interpretation.

PART 8: WARRANTLESS SEARCHES AND SEIZURE LEGISLATION: what the presumptively unreasonable Legislation MUST conjunctively provide for

37. *Hunter* is the default standard with respect to measuring impugned legislation, which authorizes search and seizure of records in the context of a quasi-criminal or criminal investigation, against s. 8. This BCA in *Arkinstall* outlined the analytical framework to determine if Hunter criteria apply to impugned legislation: (1) reasonable expectation of privacy and authorized intrusiveness; (2) stigma associated with the type of authorized search and seizure (3) feasibility of a warrant; and (4) usefulness of a warrant. The court can take judicial notice that some practice exclusively from home, some exclusively in an office. The heightened expectation of privacy in private dwellings will be **lessened** in the context of administrative inspections where the dwelling also serves as the workplace in a regulated industry (see: *Comité paritaire* at 424).

Disciplinary Investigations/Examinations versus Practice Standards Investigations

38. The comparison of the two sections is most useful due to the unequivocal choice of language by the Legislature in 1998 and then again in 2012. The following are the infallible legal conclusions:

- a. **Administrative versus Quasi-criminal:** investigations under 27 are not quasi-criminal in nature whereas investigations under s. 36 are *quasi-criminal* in nature;
- b. **Threshold test:** the threshold before a warrantless search and seizure order can be authorized under s. 36 is lower than the standard required under s. 27 i.e. reasonable suspicion versus ‘reasonable grounds to believe’;
- c. **Execution powers and scope:** the search powers granted to the LSBC under s. 36(b) are greater than that of s. 27 in that the member is obligated to produce all records and “other evidence”;
- d. **Possession or control:** the LSBC can only compel records that are within the possession or control of the lawyer who is practicing incompetently under s. 27 but there is no such requirement that the records be in the possession or control of the member under s. 36(b);
- e. **Class of persons:** s. 36 applies to former members whereas s. 27 does not;
- f. **Solicitor-client privilege records:** both are required to produce for seizure records that are confidential or subject to a solicitor-client privilege regardless of such a characterization;

- g. **Seizure of personal information:** S. 37. 1 applies to ss. 36(b) (not s. 27) which means the LSBC has authority to collect personal information i.e. religion, education, marital, blood type, DNA code, fingerprints income purchases and spending habits, medical information, and sexual orientation;
- h. **Rareness:** authorized discipline investigations are **rare** in that only 88 occurred over a 14 year period. There are no publically available statistics on practice standard investigations;
- i. **Right of review:** a member who has been levied with the costs under a practice standards investigation can apply for a review of the costs whereas no such right exists for members in the discipline investigation context; and
- j. **Right to object:** members under discipline investigations lost their right to object to disclosing certain records for search and seizure by the LSBC in 1992 whereas members under practice standards investigation recently lost their right to object under s. 89 in 2012.

39. It is unequivocal that the *Hunter* criteria apply to the **Impugned Sections** when measuring the legislation against s. 8. The SCC decision in *Goodwin* affirmed the decision in *Hunter* than an unreviewable discretionary legislative power would be contrary to s. 8.

PART 9: The GROUNDING Distinction: ‘Reason to Believe’ versus ‘Reasonable GROUNDS to Believe’

40. Reasonable suspicion means “*reasonable grounds to suspect*” as distinguished from “*reasonable grounds to believe*” (*Kang-Brown*, at paras. 21 and 25, *per* Binnie J., and at para. 164, *per* Deschamps J.). To the extent one speaks of a “*reasonable belief*” in the context of reasonable suspicion, it is a reasonable belief that an individual ***might*** be connected to a particular offence, as opposed to a reasonable belief that an individual ***is*** connected to the offence. Reasonable suspicion is a lower standard as it engages reasonable possibility, rather than probability of offence (see: **BOA Tab 19, para 75**). The Legislature intention is unequivocally clear by its explicit and deliberate language choice under the 1998 LPA through Bill 15.

PART 10: NATURE and RELEVANCE of Records: Personal information, computers, text messaging and internet traversing

41. Records of a *personal* and *confidential nature* or that reveal a personal core of biographical information carry a reasonable expectation of privacy sufficient to attract constitutional protection (*Mills* at page 81; *Plant* at pages 292-294). This includes information which tends to reveal intimate details of the lifestyle and personal choices of the individual (*Plant* at page 293; *Tessling* at paragraph 62). **Computers**, because of the vast amounts of information they contain — including intimate correspondence, the details of our financial, medical and personal situations, Internet browsing histories, as well as information that users cannot control and information that they may not be aware of or may have chosen to discard — attract a very high expectation of privacy *R. v Vu*, [2013] 3 S.C.R. 657 at paragraphs 24, 40-45). Ss. 88(1.1) and s. 37.1 are self-evident.

PART 11: CONCLUSION WHAT HAS BEEN DECIDED AND WHAT REMAINS

42. In 2015, Madam Justice Gerow found that the Rule 4-55 was authorized by a combination of the legislative sections under Rule

“In my opinion, the language of Rule 4-43 does not appear to grant powers to the Law Society beyond what the *Legal Professions Act* allows, as was the case in *Gardner*. Section 36 of the *Legal Professions Act* provides that the benchers may make rules to establish a discipline committee, delegate authority to the committee, and authorize an investigation and examination of the books, records and accounts of a lawyer if there is reason to believe that the lawyer may have committed any misconduct, conduct unbecoming a lawyer or a breach of the Act or the rules. Rule 4-43 provides that the chair of the discipline committee can order an investigation of the books and records, including electronic records, of a lawyer if he reasonably believes the lawyer or former lawyer may have committed a discipline violation. As noted, s. 29 of the *Interpretation Act* provides that in an enactment, such as the *Legal Profession Act*, the term “record” includes books, letters, papers and anything on which information is stored whether graphic, electronic or otherwise.”

43. In 2016, Mr. Justice Butler made the determinations of law that provide most helpful delineations and shape to this appeal. Mr. Justice Grauer went a step further than Madam Justice Gerow in finding that the LSBC had authority to grant the form of investigation order it did against Mr. McLean under Rule 4-43 (as it then was), pursuant to section 36 of the *LPA* (see: **BOA, Tab 23**, at para 75).
44. Even if the lower courts were to find that the “actual search and seizure order” against this appellant were made without statutory authority or decided on narrow administrative law grounds, this appellant would remain subject to a regime that he contends is unconstitutional in his ongoing relationship with the LSBC by virtue of being a former member and person. It would also mean that current and former members would remain subject to an unconstitutional regime which the LSBC has admitted and confirmed remains ongoing in perpetuity. Whether a member is a current or former member, they have the right to be free from unreasonable searches or seizures so long as they are alive. The chambers justice was looking through a historical lens as opposed the forward looking and preventative lens that s. 8 so requires.
45. Members have the right to be free from unreasonable search *or* seizure under s. 8 of the *Charter*. This includes the right of a **meaningful** review of the search and seizures authorized by the legislative sections. Stringent standards must be adopted to protect professional secrecy. This means that any legislative provision that interferes with professional secrecy more than is absolutely necessary **will be** labelled unreasonable. Discretionary unreviewable authorizations are contrary to s. 8 of the *Charter*. Even if one were to accede to the Legislature’s intent that they have authorized the LSBC to make rules regarding the alleged protection of the privacy and return of personal and privileged records that were “incidentally seized”, it demonstrates a flawed misunderstanding of

s. 8 of the Charter. As this Court of Appeal correctly made the determination of law, the review of the legislation *ab initio* **must be correct.**

PART 12: ORDERS SOUGHT

46. The appellant respectfully seeks the orders sought in the Notice of Constitutional Question (see: **AR, pages 70 to 73**).

47. All of Which is Respectfully Submitted:

Dated at the City of Vancouver, Province of British Columbia, January 13, 2019

A handwritten signature in black ink, appearing to read 'Ka McLean', is written over a light blue rectangular background.

Kevin A. McLean

Appellant

COURT OF APPEAL

ON APPEAL FROM the order of Madam Justice DeWitt-Van Oosten of the B.C. Supreme Court pronounced on the 22nd of November, 2018

BETWEEN:

KEVIN A. MCLEAN

APPELLANT
(Petitioner)

AND:

ATTORNEY GENERAL OF BRITISH COLUMBIA

RESPONDENT
(Respondent)

APPELLANT'S FACTUM

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ATTENTION: MR. DAVID EBY,
MS. SARAH BEVAN AND MR.
ALEXANDER DUTTON

PART 1: STATEMENT OF FACTS

Overview

1. The appellant is a former practicing lawyer of the LSBC. The respondent is the AGBC who acts for the BC Legislature. The learned chambers justice was employed by the

Ministry of Justice and AGBC for 23 years and, most recently, was Assistant Deputy Attorney General. The appellant has cited the regulations, legislation, jurisprudence and secondary source material in accordance with *Citation of Authorities (Civil & Criminal Practice Directive, 30 May 2013)*, and underlined portions are the hyperlinks contained in the electronic version of this factum. The appellant adopts the definitions from the various enactments and authorities, Appeal Record and Appeal Book.

2. “**Lawyer**” applies to current and former members when legislation is analyzed under Part 2, Parts 4-6 and Part 10 (see: [LPA, s. 1\(1\)](#)). The learned chambers judge correctly noted that the appellant’s challenges are to ss. 36(a), (b), (d), (i), 37.1 and 88(1.1) and (1.2) (the “**Impugned Sections**”). Sections 36(a), (b), (d) were passed in 1998, through Bill 75 fall under **Part 4 – Discipline**. The purpose of [Bill 75](#) was to reduce the need for frequent minor amendments to the *Legal Profession Act*. This was achieved by transferring powers in the Act from the Legislature to the LSBC benchers if public policy decisions and legislative supervision are not required. Sections 36(i) and 37.1, which were passed in **2012**, through [Bill 40](#), fall under **Part 4 – Discipline**, and subsections 88 (1.1) and (1.2), which were also passed in 2012, fall under **Part 10 - General**. The appellant and other former lawyers remain subject to the warrantless search and seizure scheme in *perpetuity* along with increased fines and enforcement.
3. The appellant filed a petition that various sections of the [LPA](#) are inconsistent with s. 8 of the *Charter* and lawyers’ right to a fair hearing. It is undeniable that there has been a constitutionalization of privilege in Canada along with the scope and availability of review of decisions, which authorize warrantless search and seizure, and the Impugned Sections being measured against s. 8 of the *Charter* (see: [Canada \(Attorney General\) v. Chambre des notaires du Québec, \[2016\] 1 SCR 336 \[“Chambre”\]](#); and [Goodwin v. British Columbia \(Superintendent of Motor Vehicles\), 2015 SCC 46 \[“Goodwin”\]](#)).

The Impugned Decision (see: Appeal Record, Part 3)

4. On November 22, 2018, the learned chambers judge dismissed the petition in finding that it was “unnecessary” and allowing it to proceed amount to an “abuse of process”. She

found the scope of the ‘LSBC’s investigative and disciplinary powers, as authorized by the *LPA*, is a matter of significance to more than [sic] just him, and engages important questions in the public interest’ (see: **Appeal Record, RFJ, para 33**). She also noted the seminal decision in [*Mulgrew v. The Law Society of British Columbia, 2016 BCSC 1279*](#) [*“Mulgrew”*] wherein Mr. Justice Butler ruled on ss. 26(4) of the *LPA* but declined to rule on the constitutionality of ss. 88(1.1) to (1.3) due to mootness (see: [*Mulgrew*](#) at para 57). There is no dispute that LSBC has utilized and continues to utilize 88(1.1) and (1.2) in making demands upon members of the LSBC and non-members to produce records which require that person to produce records, which are confidential and/or ‘subject to a solicitor-client privilege’, regardless of the said confidentiality of privilege. There is no dispute as to its applicability under the various sections that requires members and/or persons to produce records which the LSBC can copy.

5. The learned chambers judge’s dismissal stems from the *false premise* that while she had legislative excerpts before her, they were without their full historical and enactment context. She was provided with three volumes of authorities which were delivered to the courtroom at 9:50 a.m. by Dye and Durham on the day of the hearing. In those three volumes, Tab 2 contained the five subheadings:
 - a. *Legal Profession Act*, S.B.C, 1987 C. 25, (select sections) (“1987 *LPA*”);
 - b. [*Bill 75 - Legal Profession Amendment Act, 1992*](#), (passed: July 2, 1992) (“1992 *LPAA*”);
 - c. [*Legal Profession Act*, S.B.C 1996, C. 255](#) (“1996 *LPA*”);
 - d. [*Bill 15 - Legal Profession Act*, S.B.C. 1998, c. 9](#) (“1998 *LPA*”); and
 - e. [*Bill 40 - Legal Profession Amendment Act, 2012*](#) (“2012 *LPAA*”).
6. The appellant not only obtained and provided the full texts of the previous versions of the *LPA* but also the explanatory notes that are provided in conjunction with legislative amendments. Further, he obtained and made copies of the relevant sections from the 1987 *LPA* from the Legislative library in Victoria, BC. She then found that the investigative and

disciplinary processed utilized in relation to the petitioner, and the LSBC Rules that enabled them, continue to ‘lay at the heart of the petitioner constitutional complaints’.

7. The learned chambers relied on three decisions in dismissing the petition pursuant to Supreme Court Civil Rule, R. 9-5: *Kikla v. Ayong* 2016 BCSC 465, affirmed 2016 BCCA 486 (“[Kikla](#)”); *Toronto (City) v. C.U.P.E., Local 79*, 2003 SCC 63 (“[CUPE](#)”); and *Quinn v. British Columbia*, 2018 BCCA 320 (“[Quinn](#)”).
8. *Kikla* involved a dismissed claim against a variety of individual defendants involving the PCTIA in BC. *Kikla* neither involved a *Charter* challenge to the parent legislation nor the underlying regulations. The chambers justice discussed the law relating to the breach of statutory duty by public authority and that no action for damages may be maintained against a regulatory body exercising statutory authority exercising its statutory powers (see: **Appeal Record, RFJ, para 50**). Mr. McLean’s case under s. 1410056 (the “Damages Action”) was stayed pending a judicial review of only the *making* and the *execution* of the administrative search and seizure order (“ASSO”). Mr. Justice Grauer explicitly found even assuming that the LSBC had jurisdiction to grant the ASSO and did not act improperly in doing so, if the Law Society nevertheless carried the order out as an unreasonable search and seizure which “indeed could be the subject of a civil action for damages” (see: *McLean v. LSBC et al*, [2017 BCSC 987](#)).
9. *CUPE* involved a recreation instructor, O, who had been criminally convicted of sexually assaulting a boy under his supervision wherein the complainant testified and the accused did so as well. The trial justice made a finding of fact that the complainant was credible and O was not. The City, waiting until after the conclusion of the trial, fired him a few days after his conviction. O filed a grievance wherein an arbitrator found, after O testified and the complainant was not called to relive that experience and testify, he had rebutted the presumption raised by the conviction. The Ontario division court quashed the arbitrator’s ruling, the ONCA upheld that decision and the SCC dismissed C.U.P.E.’s appeal on the basis, *inter alia*, that it was an abuse of process to relitigate the exact same matters where it had been proven beyond a reasonable doubt. The appellant’s challenge

does not have anything to do with anyone being criminal convicted and trying to rebut the presumption that such a conviction is conclusive proof of all essential elements of that offence in a subsequent civil proceeding.

10. If the appellant were to relitigate the issues of whether the LSBC had the *vires* to pass Rule 4-55 pursuant to its statutory authority under s. 36 as the issue has been decided by Madam Justice Gerow in [*McLean v. Law Society of British Columbia*, 2015 BCSC 1431](#) and Mr. Justice Grauer in [*McLean v Law Society of British Columbia*, 2017 BCSC 987](#). In fact, the LSBC raised that as a defence when it submitted that the appellant was relitigating an issue decided by Madam Justice Gerow (see: **Appeal Book, page 58**). Both decisions were appealed (the former by the LSBC and the latter by the appellant), the AGBC chose not to intervene and neither of those findings were disturbed on appeal.
11. Further, Mr. McLean and Mr. Gomery, Q.C., as he then was, spiritedly argued whether the LSBC Rule 3-6 (formerly LSBC Rule 3-5.01) was ultra *vires* the LSBC under the JRPA Petition. The appellant argued that it did not comply with ss. 26.01 of the *LPA* and Mr. Justice MacIntosh agreed with him in the hearing on September 6, 2017 and, at the very least, tacitly agreed with him in his Reasons for Judgment (see: [*McLean v. LSBC*, 2017 BCSC 1713](#)). However, he found that, *inter alia*, the combined sections like s. 3 and 11(2) along with the SCC's seminal decision in [*Green v. Law Society of Manitoba*, 2017 SCC 20, which appears to represent a change in the law](#), that deference is afforded and the standard of reasonableness is now applied to LSBC rules, he *would have* decided in favour of the LSBC. Although, the LSBC curiously brought a security for costs motion after the appellant had set the hearing for the *JRPA Petition*, which now appears to have been to the appellant's personal fortuitousness, it relied on [*Ocean Port Hotel Ltd. v. British Columbia \(General Manager, Liquor Control and Licensing Branch\)*, 2001 SCC 52 \["Ocean Port"\]](#) in defending the legislature's choice to overlap functions which normally contravene bias.
12. With those binding findings, the unequivocal obligations (i.e. s. 36(d) and ss. 88(1.1) and (1.2)) placed on members and persons, the principles laid down in *Ocean Port*, and taking heed of the Court of Appeal's comments in [*2016 BCCA 368*](#) regarding proper procedure,

the appellant filed the petition in December 2017 (see: Supreme Court Civil Rules. R. 2 i.e. authorized by enactment and construction of enactment require the filing of a petition). The petitioner satisfied the requirement of notice under the BC [*Constitutional Question Act, R.S.B.C. 1996, C. 68*](#) then and again (see: **Appeal Record, pages 70 – 73**).

13. *Quinn* involved a claim by two parents and their two infant children, who were removed from their custody by the MCFD pursuant to s. 30 of the *CFCSA*. After the children were returned, the parents filed a Notice of Civil Claim in BC Supreme Court against the province as represented by the MCFD. The claim was grounded in that the children were removed without reasonable grounds and their s. 7 rights were breached and *Charter* damages. The Province applied to dismiss the claim under Supreme Court Civil Rule 9-5. The chambers judge disagreed with the Province, dismissed their application and granted the parents’ application to further amend their pleadings. The Province appealed. The Court of Appeal allowed the appeal in finding that the chambers judge erred in not dismissing the parents’ claim due to the existence of both private and public law remedies that are adequate alternatives to the unique public law remedy of awarding *Charter* damages. The chambers judge further erred in failing to dismiss their claim as it could have been raised in the Provincial Court under the statutory scheme of the *CFSA* proceedings which provides a more ‘*immediate and appropriate forum*’ for review of the Director’s conduct at issue. This appeal is not a challenge to the LSBC’s actions or conduct. This is a challenge squarely laid at the feet of the Legislature for their passing of bills since those historic defeats in *Gardner*, and how that has affected members and persons over the last 15 years. The appellant, parenthetically, states that he would have gone back further if the LSBC has public records in that regard.

14. The learned chambers judge then purported to apply the abuse of process doctrines to the “*particular circumstances of this case*” and found that allowing it to proceed would violate principles of judicial economy, consistency, finality and integrity of the administration of justice. She then found that the Appellant seeks to “circumvent the appropriate review mechanism” (see: **Appeal Record, Tab 3, para 82**). The learned chambers judge found that the Petition was unnecessary and found there was ‘at least one extant matter’ (without

particularizing which matter), subject to the discretion of the hearing judge, in which Mr. McLean can challenge the lawfulness of the **LSBC's actions** on *constitutional grounds* (assuming he is able to meet the requirements imposed for continuance), with opportunity to raise and seek adjudication of the *Charter* concerns that he says are inherent to the LSBC's investigative and disciplinary Rules and processes (see: **Appeal Record, Tab 3, para 77**).

The Appellant's Quest for Further Facts and Records

15. The Appellant sought more records and facts due to the AGBC repeated arguments that there were not sufficient facts to adjudicate the challenge of the Impugned Sections measured against the *Charter*. He filed Notices of Application on a variety of dates. The LSBC provided the records sought but for the appellant's most recent application where he sought the recommendations made the LSBC Act and Rules Committee prior the passing of Bill 40. The AGBC did not even respond to some of the Notices of Application despite being duly served.

Uncontroverted Facts

16. On April 17, 1982, the *Charter* was signed into law by Queen Elizabeth II of Canada on **April 17, 1982**, along with the rest of the Act. In 1984, the SCC ruled on the **constitutional validity** of a statute authorizing a search and seizure (see: [*Hunter et al v. Southam Inc.*, 1984 S.C.R. 145](#)). In 1985, the SCC released their seminal decision in [*Cardinal v. Kent Institution*, 1985 CanLII 23](#) that the right to a **fair hearing** is an “**independent, unqualified right** which finds its essential justification in the sense of procedural **justice** which any person affected by an administrative decision is entitled to have. In 1986, the BCCA affirmed the decision of the BCSC that the demand by a professional association upon the regulated professional for production of his practice records for the purpose of temporarily removing them to be copied at their office constituted a search and a seizure **notwithstanding** the *refusal* of the regulated person to comply with such demand (see: [*Bishop v. College of Physicians and Surgeons of B.C.*, 1985 CanLII 569, B.C.S.C.](#))

17. From **1987 to 1992**, **LSBCDC** was authorized to grant warrantless search and seizures of members' records that were relative to one's practice, in their possession or control, *and* commenced by citation (see: 1987 *LPA*). Current and former members also had the right to object to production, where they were so required, on the grounds of confidentiality with a process that followed (see: **Appeal Book, pages 97 and 98**).
18. In 1990, the **LSBCDC** granted an internal administrative search and seizure order to the LSBC to execute against Mr. Gardner, QC, a member of the LSBC. Mr. Gardner petitioned the court that the order, not any enactment, exceeded the jurisdiction of the LSBC. Mr. Justice Harvey agreed and found that said administrative search and seizure order was beyond the scope of the LSBC's powers and set aside the order and ordered the return of the records (see: [Gardner v. LSBC, 1990 Canlii 409 \(B.C.S.C.\)](#)). In **1991**, the LSBC appealed to Court of Appeal and a three judge panel of BCCA **unanimously affirmed** Mr. Justice Harvey's decision on similar grounds (see: [Gardner v. Law Society of British Columbia, 1991 CanLII 1157](#)).
19. In **1992 (July 2)**, with [Bill 75](#), the Legislature, which receives recommendations from LSBC Act and Rules Committee, amended the *LPA* by way of the 1992 *Legal Profession Amendment Act*. The Legislature **removed** the constraint that the administrative search and seizures were confined to records relative to a members' practice and within his or her control so long as the **LSBCDC** '*believes that a former member may have committed* 'any misconduct'. Further, a citation was no longer required. Current and former members' were deprived of their former right to object to production on the grounds of confidentiality (see: **Appeal Book, pages 99 to 101**). In the same year, the SCC released its seminal decision in [Schachter v. Canada, \[1992\] 2 SCR 679 \["Schachter"\]](#) distinguishing between s. 52(1) of the *Constitution Act, 1982*, Part VII, General and s. 24 (1) of *Constitution Act, 1982*, Part 1, Canadian *Charter of Rights and Freedoms*.
20. In **1996**, the Legislature repealed the *LPA* and passed the *1996 LPA*. Administrative search and seizure orders were under ss. 40(4) and (6) with the threshold remaining

‘reason to believe’ a former or current member may have committed any misconduct. Persons who had participated in the decision to issue a citation were prohibited from serving on panels or review boards to adjudicate the professional conduct of members (see: [1996 LPA](#), ss. 43(2)). The BC Legislature also passed the [Interpretation Act](#), which is virtually identical to the previous [Interpretation Act, R.S.B.C. 1979, C. 206](#). In 1998, the substantive and deliberate changes to the *LPA* are addressed infra and supra and address in the petitioner’s written argument (see: **Appeal Book, pages 181 to 228**).

21. While the LSBC “hearing decisions and admissions database” states that they have hearing decisions since August 1992, no results are returned for any searches prior to 2003. The [2003 LSBCDC](#) consisted 15 individuals. **Three (3) members (Mr. Keighley, QC., and Anne Wallace)** of the **2003 LSBCDC** also adjudicated the professional conduct of **two** members (Mr. Barton and Mr. Legge) in 2003 on three (3) separate occasions (see: [2003 LSBC 38](#); and [2003 LSBC 42](#)).
22. By way of the “[Forensic Copying of Computer Records by the Law Society](#)” the LSBC released in October 2009, the LSBC applied to the **LSBCDC** for **46** administrative search and seizure orders and the Chair of the **LSBCDC** granted each application. The number of applications that were granted to the LSBC by the **LSBCDC** is not delineated per year.
23. The [2004 LSBCDC](#) consisted of 14 individuals. **Four (4) members (Mr. Hunter, QC, Ms. Preston, Mr. Vertlieb, Q.C.; and Mr. Toews)** of **2004 LSBCDC** also adjudicated the professional conduct of **eight (8) members (Mr. Gellert, Mr. Hammond, Mr. Hordal, Lawyer 2, Mr. Milne, Mr. Hall, Mr. Jones, and Mr. Legge)** by way of 12 reported decisions in 2004 (see: [2004 LSBC 28](#); [2004 LSBC 18](#); [2004 LSBC 21](#); [2004 LSBC 32](#); [2004 LSBC 36](#); [2004 LSBC 09](#); [2004 LSBC 42](#); [2004 LSBC 19](#); [2004 LSBC 01](#); [2004 LSBC 10](#); [2004 LSBC 37](#); and [2004 LSBC 02](#)). Further, a seven person review board found that a suspension is *far more serious* than fine and **only** for the most serious demonstrations of professional misconduct (see: [Re Hordal 2004 LSBC 36](#)).
24. The [2005 LSBCDC](#) consisted of the **13 individuals. Three (3) members (Mr. Hunter, QC; Mr. McDiarmid, Q.C; and Mr. Jackson)** of the **2005 LSBCDC** also adjudicated the

professional conduct of **four (4)** members (Mr. Goldberg, Mr. Rai, Mr. Gellert and Mr. Rodgers) on five (5) separate occasions in 2005 (see: [2005 LSBC 10](#); [2005 LSBC 22](#); [2005 LSBC 37](#); [2005 LSBC 15](#); and [2005 LSBC 42](#)).

25. The [2006 LSBCDC](#) consisted of twelve (12) individuals. Dan Bennett; Jo Ann Carmichael; QC; and Peter Voith; QC. Two (2) members (**Mr. Dobell** and **Ms. Preston**) of the 2006 LSBCDC also adjudicated the professional conduct of two (2) members (Ms. Geronazzo and Mr. Edwards) on **two (2)** occasions (see: [2006 LSBC 50](#); and [2006 LSBC 27](#). *Baldwin Janzen Insurance Services (2004) Ltd. v. Janzen*, 2006 BCSC 554 found that there was no dispute that data and information in electronic form are documents.
26. The [2007 LSBCDC](#) consisted of 12 individuals. **Three (3)** members (**Mr. Dobell**, **Mr. Hume** and **Ms. Lindsay**) who sat on the 2007 LSBCDC in said year contemporaneously adjudicated the professional conduct of four members (Mr. Goldberg, Mr. Sullivan, Mr. Strandberg and Mr. Welder) on **six (6)** occasions in 2007 (see: [2007 LSBC 53](#); [2007 LSBC 55](#); [2007 LSBC 08](#); [2007 LSBC 44](#); [2007 LSBC 19](#); and [2007 LSBC 29](#)).
27. There were 13 individuals of the [2008 LSBCDC](#). **One (1)** member (Mr. Zacks, QC), who sat on the 2008 LSBCDC, also adjudicated the professional conduct of one member (Mr. Josh Richardson) in 2008 on one occasion (see: [2008 LSBC 05](#)).
28. There were 13 individuals on the [2009 LSBCDC](#). The LSBC applied to the LSBCDC for **six (6)** administrative search and seizure orders and the Chair (Art Vertlieb, QC) of the LSBCDC granted each one.
29. There were 12 individuals on the [2010 LSBCDC](#). The LSBC applied to the LSBCDC for **six (6)** administrative search and seizure orders and the Chair (**Art Vertlieb, QC**) of the LSBCDC granted each application. **Three (3)** members (Richard Stewart, **Kathryn Berge, QC**; **Stacy Kuciak**; and **Herman Van Ommen**) of the 2010 LSBCDC adjudicated the professional conduct of two members (Mr. Sarai; and Lawyer 10) on **three (3)** different occasions in 2010 (see: [2010 LSBC 17](#); [2010 LSBC 26](#); and [2010 LSBC 02](#)).
30. There were eight members of the [2011 LSBCDC](#). The LSBC applied to the 2011

LSBCDC for **two (2)** administrative search and seizure orders and the Chair (**Richard Stewart, QC**) of the LSBCDC granted each application. There were two members (**Mr. Stewart**; and **Ms. Berge QC**) of the 2011 LSBCDC in said year who also adjudicated the professional conduct on one member (Mr. Randall McRoberts) member on one (1) occasion in 2011 (see: [2011 LSBC 04](#)). The LSBC further amended certain rules. The rules governing complaints and investigations were updated to clarify that lawyers are **required to cooperate** with a Law Society investigation, answer questions, orally or in writing, as directed, and **produce records**, including those that are **privileged** or confidential, and to **enable investigators to enter lawyers' offices during business hours** or by agreement. The process for **claiming a privacy interest in material that is copied in the course of a discipline investigation** is clarified (Rule 4-43(1) to (1.3)).

31. There were 12 members who sat on [2012 LSBCDC](#). The LSBC applied to the LSBCDC for **two (2)** administrative search and seizure orders and the Chair (**Herman Van Ommen, QC**) of the LSBCDC granted each application. With [Bill 75](#), the *Legal Profession Amendment Act* was passed with the following “Explanatory Notes” from [BC Legislature website](#).
32. There were ten (10) individuals of the [2013 LSBCDC](#). The LSBC applied to the LSBCDC for **four (4)** administrative search and seizure orders and the Chair (**Herman Van Ommen, QC**) of the LSBCDC granted each application. The [Code of Professional Conduct for British Columbia](#) (the “*BC Code*”) was passed on New Year’s Day of 2013 by the LSBC benchers.
33. There were ten individuals on the [2014 LSBCDC](#). The LSBC applied to the LSBCDC for **five (5)** administrative search and seizure orders and the Chair (**Philip Riddell**) of the LSBCDC granted each application:
 - a. on March 5, 2014, the LSBC issued a *subpoena duces tecum* upon Mr. Mulgrew and Vancouver Sun to produce specified documents during a time limited period. The LSBC relied on ss. 88(1.1) and required Mr. Mulgrew and The Vancouver Sun to produce their records regardless if they were subject to confidentiality or a solicitor-client privilege;

- b. on May 23, 2014, Mark Bussanich applied to Philip Riddell for an administrative search and seizure order and Philip Riddell granted the warrantless administrative search and seizure order (the “ASSO”) on May 27, 2014. The LSBC executed the ASSO on June 3, 2014 at the appellant’s private office and continued to demand to enter his principal residence pursuant to the ASSO. In executing the ASSO, the LSBC relied on ss. 88(1.1 – 1.3) and cited it in their cover letter to the member along with providing a print out of the exact legislative section; and
 - c. On July 9, 2014, Mr. Mulgrew commenced proceedings against the LSBC.
34. There were eight individuals on [2015 LSBCDC](#). The LSBC applied to the LSBCDC for **two (2)** administrative search and seizure orders and the Chair (**Craig A.B. Ferris, QC**) of the LSBCDC granted each application. There were two members (Ms. Kresivo; and Mr. Petrisor) of the LSBCDC who contemporaneously adjudicated the professional conduct of **three LSBC members** (Mr. McLean; Mr. Perry; and Mr. Pham) on **four** instances in 2015 ([2015 LSBC 09](#); [2015 LSBC 30](#); [2015 LSBC 13](#); and [2015 LSBC 14](#)).
35. A three (3) unanimously person panel found the appellant guilty of professional misconduct for, *inter alia*, not consenting to the LSBC entering his principal residence, which he owned, to forensically copy records therein (see: [2015 LSBC 06](#)). His conduct was found to be “**grave**”, he was fined and the LSBC converted those fines into Supreme Court judgments which they have used to obtain orders for security for costs. After the LSBC rescinded the FPO and specifically ousted the statutory requirement under s. 88 vis-à-vis Mr. Mulgrew and The Vancouver Sun, the LSBC filed a Response to Petition in *Mulgrew*. In July 2015, the AGBC filed its Response to Petition in *Mulgrew* and pleaded that an order to produce is not a seizure at law (see: pg. 3, para 8).
36. There were eight individuals of the [2016 LSBCDC](#). The LSBC applied to the LSBCDC for **four (4) administrative** search and seizure orders and the Chair (**Miriam Kresivo, QC**) of the LSBCDC granted each application. Mr. Justice Butler heard Mulgrew over three days on January 20 – 22, 2016. Mr. Justice Butler dismissed the Petition and declined to rule on s. 88(1.1 – 1.3).

37. There nine **(9) individuals** on the [2017 LSBCDC](#). The LSBC applied to the **LSBCDC** for **four (4)** administrative search and seizure orders and the Chair (**Mr. Brook Greenberg**) of the **2017 LSBCDC** granted each application. Three (3) members (**Ms. Merrill, QC**; **Mr. Ongman**; and **Mr. Riddell**) of the **LSBCDC** have contemporaneously adjudicated the professional conduct of members (Mr. Gallant; Mr. Pyper; Mr. Jensen; Mr. Butterfield; Mr. Gurney; Lawyer 17; and Mr. Strother) on 13 different occasions in 2017 (see: [2017 LSBC 36](#); [2017 LSBC 27](#); [2017 LSBC 21](#); [2017 LSBC 11](#); [2017 LSBC 02](#); [2017 LSBC 42](#); [2017 LSBC 41](#); [2017 LSBC 33](#); [2017 LSBC 32](#); [2017 LSBC 30](#); [2017 LSBC 23](#); [2017 LSBC 18](#); and [2017 LSBC 10](#)).
38. In [2018 LSBCDC](#) consisted of the current members as denoted on the LSBC website, mentioned infra. In 2018 (until June 21), the LSBC had applied to the **LSBCDC** for three (3) administrative search and seizure orders and the Chair (Mr. Herman Van Ommen, Q.C.) of the **LSBCDC** had granted each application to that date. Two members (**Dean Lawton** and **Carolynn Ryan**) of the **2018 LSBCDC** have contemporaneously adjudicated the professional conduct of two members (**Mr. Pyper**; and **Mr. Kaminski**) in two different reported decisions (see: [2018 LSBC 10](#); and [2018 LSBC 14](#)).
39. In summary, the following facts are uncontroverted:
- a. **Warrantless search and seizure orders:** the LSBC's applications to the LSBCDC for warrantless administrative search and seizure order have never been rejected from 2004 to 2018 i.e. **88 for 88**;
 - i. those applications are granted on the standard authorized by ss. 36(b) which is reason to believe a member may have committed misconduct
 - ii. since the passing of Bill 40 in 2012, which grant the LSBC the authority to collect personal information and require the person to produce solicitorclient privilege records regardless of such characterization, the LSBCDC Chair has granted **24 orders** against current or former members;

- b. **Judicial search warrants:** the LSBC has not applied for a s. 37 order since its inception in 1998 to present;
- c. **Citation hearings:** there have been 582 discipline decisions since 2003 to 2018 (June) and a member of the LSBCDC in that year has sat on a hearing panel to adjudicate the professional conduct of a current or former member in that same year on **54 occasions**; and
- d. **Interim suspension hearings:** although the LSBC is authorized to delegate authority and responsibility to the LSBCDC under Part 4, it has passed a rule that prohibits a member of the LSBCDC sitting on such a panel to determine whether a member should be interim suspended (see: LSBC Rule 3-12(1). The LSBC confirmed that in writing that a member of the LSBCDC has never sat on such a panel as those hearings are not public.

PART 2: ERRORS IN JUDGMENT

40. Having correctly found that the lawful scope of the LSBC's investigative and disciplinary powers, which has been found to be authorized by the *LPA*, transcended the petitioner and engages important questions of public interest whilst misstating that the evolutionary history of the *Legal Profession Act* was not before her, the chambers judge erred in law independently and disjunctively:
 - a. by finding that the petition was unnecessary and abuse of process;
 - b. by finding that allowing the merits of the petition to be heard would violate principles of judicial economy; consistency; finality; and integrity of the administration of justice;
 - c. by finding that the petitioner should have challenged the *LSBC's actions* on constitutional grounds as opposed to his having standing to challenge the Impugned Sections on issues that transcended him;
 - d. by finding that the petitioner was circumventing the “appropriate review mechanism” by proceeding with a judicial review of the Impugned Sections under s. 52 of the *Constitution Act, 1982*;
 - e. by failing to apply the correct legal test to determine whether the challenge should be some or all of the Impugned Sections or the subordinate legislation;
 - f. by misapplying or not applying the principle of *res judicata*; and
 - g. by misapplying the principles of *stare decisis*.
41. Having correctly found that the issues in the proceeding public interest litigation, the evidentiary record providing each discipline decision from 2003 to 2018 along with each

specific citation juxtaposed against the composition of the **LSBCDC** in each year with the evolutionary history of the LPA before her, the chambers judge erred in law:

- a. by failing to apply the legal tests regarding independence and reasonable apprehension of bias to each of the 55 decisions from 2003 to 20018;
 - b. by failing to apply the legal tests regarding the requirement that the arbiter, who is legislatively authorized to pass on the appropriateness of a warrantless search and seizure order of records and “other evidence”, be entirely neutral and impartial with respect to the 88 orders granted from 2004 to 2018; and
 - c. by adopting the submission of her former client, AGBC, that the petitioner’s constitutional complaints would be appropriately adjudicated to the ‘actual search and seizure orders [sic]’ that were made against *him* specifically and hearing process that led to *his* disbarment.
42. Having found that the petition engaged important issues of public interest and in light of the Legislature unequivocally empowering the LSBC with greater investigative and regulatory powers by the passing of Bill 40 in May 2012, the learned chambers judge failed to analyze and apply the correct legal tests regarding the application of ss. 88(1.1) and (1.2) to each section where a person is required to produce records regardless of the confidentiality or being subject to a solicitor-client privilege.
43. Since the learned chambers judge call to the LSBC in 1993 and having worked a distinguished career as a government lawyer for the BC Ministry of Justice to her promotion as Assistant Deputy of the Attorney General of British Columbia in 2012, the learned chambers justice erred in law by failing to consider the legal test for recusal.
44. Since the learned chambers justice found that she did subjectively find that she had the full evidentiary record before her without any particulars of what further facts or evidence would be required, she committed an error of law by not granting the relief sought in the appellant’s filed notices of application.

PART 3: ARGUMENT

45. The facts are indisputable as they are a matter of record and not open to opinion or interpretation. There is no dispute as to the precise language choice used by the Legislature. The only dispute is how the application of the legal test for statutory interpretation. Under Practice Standards, the Legislature authorized the LSBC to conduct a warrantless search and seizure of a member *if* there are ‘*reasonable grounds to believe*’ (“**RGB**”) that the lawyer is practicing incompetently. Previously, the standard of “*reasonable grounds to believe*” only existed under judicial search warrants and remains under s. 37. However, under discipline investigations, the Legislature deliberately chose to remain with the language it had since 1992 and that is “*reason to believe*” that a member “*may have committed*” “*any misconduct*”. The maxim of statutory interpretation of *expressio unius est exclusio alterius* is most germane.

(1) Appellate Standard of Review

46. Questions of law are questions about what the *correct legal test* is; questions of fact are questions about what *actually took place* between the parties; and questions of mixed fact and law are questions about *whether the facts* satisfy the legal test (see: [*Burlington Resources Canada Ltd. v. Peace River \(Assessor of Area #27\)*, 2005 BCCA 72](#)). Where the question of law is extricable from the factual issues, an error on a question of mixed fact and law can amount to a pure question of law subject to the correctness standard. The criteria for the exercise of a judicial discretion are legal criteria, and their definition as well as a failure to apply them or a misapplication of them raise questions of law which are subject to appellate review (see: [*British Columbia \(Minister of Forests\) v. Okanagan Indian Band*, 2003 SCC 71](#)). The standard of review is correctness. The Court of Appeal, with the uncontroverted facts before it along with the settled law, to replace their opinion with that of the learned chambers justice with her former client.

(2) Legal distinction between S. 52(1) and s. 24(1)

47. The distinctions affect how the legal test is applied to principles of judicial economy, consistency, finality, administration of justice, appropriate review mechanism and attacking the LSBC’s actions. Since the *Charter* is part of the Constitution of Canada, any

law that is inconsistent with the *Charter* is “of no force and effect”. Since it falls to this Court of Appeal to determine whether or not a law is inconsistent with the *Charter*, s. 52(1) provides an **explicit basis** for **judicial review** of legislation in Canada (see: **Peter W. Hogg, Constitutional Law of Canada, (Toronto: Thomson Carswell, 2005) [“Hogg”] at page 866**). This is a full answer to the chambers justice comment regarding “*appropriate review mechanism*”.

48. S. 52(1) appears to confer no discretion on the court, requiring the court to make a holding of invalidity if it concludes that a law or act is inconsistent with *Constitution*. The learned chambers judge noted the presumption of constitutionality but where a law is found to be inconsistent with the *Charter* of Rights, the court is **obliged** to strike the law down. If the litigation is a criminal prosecution, the person charged under the invalid law will be entitled to be acquitted. If the litigation is a civil action, the parties relying on the invalid laws lose the legal bases for their case (see: **Hogg, page 868**). This is a full answer to the learned chambers justice’s commentary regarding economy, finality, consistency, appropriate review mechanism, administration of justice. The chamber justice cited inapplicable cases which were not binding upon her, then applied the apparent principles to the “circumstances of this case”. This case is this “proceeding”, the challenge is the Impugned Sections, and the facts (circumstances) are uncontroverted as to what has transpired over the last 25 years. Where the challenge is based on the unconstitutionality of legislation, recourse to s. 24 is unnecessary and the particular effect on the challenge party is irrelevant. More importantly, it means that the regulatory body cannot rely on the invalid legislative section for their continued regulation of the current member, former members and persons under the *LPA*. It is about ensuring that members have their right to a fair hearing protected when their professional reputation and livelihood hang very much in the balance. S. 8’s purpose is about preventing unjustified regulatory intrusions before they happen and not determining whether they should have happened on a case by case basis.

(3) Empowering legislation versus subordinate regulations

49. Although the issue is *res judicata* as to whether s. 36 authorizes Rule 4-55 in its current form, the appellant provides the below in the event analysis is required. Mr. Justice

Rothstein, as he then was of the FCA, in *Canada (Information Commissioner) v. Canada (Prime Minister)* 1992 CanLII 2414 (F.C.). [*“Information Commissioner”*].

50. *Information Commissioner* which applied *Slaight* provided the following analytical framework that is deconstructed into the following syllogism:

a. **Guaranteed/Protected Right at Issue:** if a guaranteed right is at issue, then the impugned legislative sections **must** be analyzed with respect to the below.

1. **No Discretion:** if the impugned legislative section has ***not conferred*** any discretion or power to the benchers *to limit* said right(s), then the challenge is directed at the section(s) of the parent legislation/enabling statute; or

2. **Precise Discretion:** if the impugned legislative section has conferred a precise discretion or power to the benchers *to limit* said right(s), then the challenge is **directed** at the section(s) of parent legislation/enabling statute; or

3. **Imprecise Discretion**

a. **Imprecise Discretion yet Expressly Conferred:** if the impugned legislative section has conferred an imprecise discretion or power to the benchers *to limit* said right(s) but that power is **expressly conferred**, then the challenge is directed at the section of parent legislation/enabling statute; or

b. **Imprecise Discretion Not Expressly Conferred yet Necessarily Implied:** if the impugned legislative section has conferred an imprecise discretion or power to the benchers *to limit* said right(s) but that power is not **expressly conferred** yet necessarily implied, then the challenge is directed at the section of parent legislation/enabling statute.

51. Ss. 88 (1.1) and (1.2) do not confer any discretion on the LSBC so these subsections must be analyzed over any exercise of statutory authority to pass rules compelling persons to consent to the search and seizure of records, which are subject to a solicitor-client privilege. There is no dispute as to the definition of “record” and the power to copy is

included with the power to require production of records. The attack must be on constitutional validity of this statutory provision.

52. As noted *supra*, s. 37.1 confers a discretion on the LSBC but it is strikingly precise in that, “sexu the *Freedom of Information and Protection of Privacy Act*.” The *FOIPPA* is acutely precise in when a public body can collect personal information which is, inter alia, when the body is authorized by “an Act”. The attack must be on constitutional validity of this statutory provision.

53. Relevant to this appeal, ss. 36(i) (i) certainly confers a discretion on the LSBC which the Legislature states, “provide for the protection of the privacy of records that are irrelevant to an investigation or examination and inadvertently gathered in the investigation or following a court order”. To the extent that the discretion is not precise, which is not conceded, this legislative subsection confers an imprecise power on the benchers to limit the rights of lawyers under s. 8 in searching seizing records which are personal, business, or unrelated to the disciplinary investigation. The attack must be on constitutional validity of this statutory provision.

54. Ss. 36(d) compels lawyers to consent to the search and seizure of records and other evidence on demand. The discretion to make rules within this framework is strikingly precise which is a power to limit rights under s. 8 of the *Charter*. Consequently, the attack must be on constitutional validity of this statutory provision.

55. Ss. 36(b) confers a power on the LSBC to make rules authorizing a warrantless search and seizure of records and other evidence of member if there is reason to believe a lawyer may have committed any misconduct. Legislation that authorizes warrantless searches and seizures is presumptively unreasonable. Discipline proceedings are quasi-criminal in nature and this section falls under a discipline proceeding against a lawyer. The exercise of power by the LSBC is confined to a formula as to threshold to authorize a warrantless search or seizure, and it involves little if any discretion. This is particularly apposite when one reads the *Interpretation Act*, which the same Legislature passed, in tandem with this legislative provision. The attack must be on *constitutional validity of statutory provision*.

56. The same can be said of ss. 36(a) where the power conferred on the LSBC is to delegate any or all authority and responsibility under the entirety of the Discipline Part, other than rule-making authority, to that committee. It confers a discretion but that discretion is precise as the LSBCDC can have authority over ss. 36(b), (c), (e), (f), (g), (h), 38 and 39. There is no guaranteed right to not be cited or not have a citation rescinded, or not be compelled to appear before a committee to discuss a member's conduct or competence. Further, there is no right to be able to continue to practice law when a member has been convicted of an indictable offence. Subsection 36(a) also states in conclusory fashion that the discipline committed is established under this subsection. Ergo, the attack is on the *constitutional validity of this statutory provision* where it confers the power on the LSBC to limit lawyers' (current or former) right to be free from unreasonable search or seizure and/or their right to a fair hearing.

(4) Purpose and Protection of s. 8

57. S. 8 protects everyone from *unreasonable* searches or seizures. The purpose requires a means of *preventing* unjustified searches and seizures *before* they happen, not simply of determining, after the fact, whether they ought to have occurred in the first place (see: [Hunter](#)). The SCC has identified **personal** privacy; **territorial** privacy; and **informational** privacy as protected.

(5) Discipline Proceedings, Fair Hearings and Rule against bias

58. Discipline proceedings have been found be quasi-criminal (see: [Dr. Henderson v. The College of physicians and surgeons of Ontario, 2003 CanLII 10566 \(O.N.C.A.\)](#)). This is certainly the case when the Legislature has increased the quantum of maximum fine amounts and provided the LSBC with greater post judgment enforcement measures.

59. The SCC has found that legislatures have the choice of overlapping said functions out of necessity with such flexibility comported to schemes that involve purely economic interests (see: [Ocean Port](#)). In fairness to the legislature, a statutory regime **prevails** over

principles of natural justice subject to one **caveat**: *assuming* the constitutionality of the enactment is not at issue. The constitutionality of subsection 36(a) is at issue. What is important about the constitution is not necessarily the supremacy but that it limits the powers of legislative bodies. An attempt by a legislative body to act outside its powers is void because it is ultra vires. Ergo, the Constitution is supreme over statutes. This is yet another reason why the constitutionality of the statute must be challenged first. To proceed the way that the chambers justice suggest could mean that one justice could find that the Legislature is authorized to have members of the **LSBCDC** grant warrantless searches and seizures and/or render decisions in the professional conduct sphere but another justice may find that the enabling statute is unconstitutional.

(6) The disjunctive and conjunctive nature of searches and seizures at law

60. A right to inspect documents as part of an administrative scheme set up by **statute** to regulate commercial and industrial activity constitutes a **search** (see: [*Comité paritaire de l'industrie de la chemise v. Potash*, \[1994\] 2 S.C.R. 406 at pages 440-441](#)). The photocopying of a document is a search (see: [*R. v. Law*, 2002 SCC 10](#)). A search can include the right to look for things that are tangible or intangible, such as spoken words and electronic data (see: [*R. v. Morelli*, \[2010\] 1 S.C.R. 253](#)). Records and “other evidence” fall under this definition. Personal information under the *FOIPPA* falls under this definition.

61. The demand upon a person to produce a record is a seizure and as conceded by the LSBC (see: [*Mulgrew*](#), para 23). The SCC distinguished between the ability to demand for documents made by a government body *versus* said person being able *to collect* records (see: [*Arkinstall*](#), para 71).

(7) Warrantless search and seizure legislation

62. A warrant can only be issued by a justice and the LSBCDC is not composed of justices. Legislation that authorizes **warrantless** searches and/or seizures is **presumptively**

unreasonable (see: [Branch v. British Columbia Securities Commissio, 1995 2 S.C.R. 3](#)).

The relevant governmental body must satisfy: whether these searches and/or seizures are authorized by law; that the law authorizing the search or seizure is reasonable; and that the manner in which the searches and/or seizures was carried out was reasonable. The burden falls upon AGBC to demonstrate that the legislative scheme complies with s. 8.

(8) Coercive Element of Impugned Sections

63. In [Arkininstall v. City of Surrey, 2008 BCSC 1419](#), at para 125 the Civil Liberties Association of BC submitted that even though legislative provisions that *may* contemplate the consent of an occupier of property, because of the coercive power of such authorizations and associated penal sanctions for failure to comply, such impugned legislation must be analyzed as if they authorize entry. Mr. Justice Smart agreed and found that such legislative provisions must be viewed as if they authorize entry per se and the [BCCA](#) affirmed said ruling.

64. In the context of regulation of members of a professional body, the then Chief Justice of BC Supreme Court in 1989, Madam Justice McLachlin, found in [College of Physicians & Surgeons of B.C. v. Bishop, 1989 CanLII 2674 \(B.C.S.C.\)](#), although the new rule (amended after being struck down) did **not** permit the college to physically remove the original records from the member's office, she was bound to find that the rule constituted at least a **search** under the R. 12. She further found that R. 12 (even if it is amended form relating to search and seizure of a specified class of records under R. 11 such as patient records) which required a doctor to produce records and permit the copying of said clinical records was a search and seizure under s. 8 of the *Charter*. Simply put, "The **member cannot refuse** short of **violating** the **law**."

(9) The Impact over the particular facts

65. The SCC further echoed those sentiments and found in [Thomson Newspapers Ltd. v. Canada \(Director of Investigation and Research, Restrictive Trade Practices](#)

[*Commission*](#)), 1990 1 S.C.R. 425 that whether the empowered body “takes the documents” or does not, the impact on a Canadian’s **privacy remains** the **same**. The constitutional validity of a statute which authorizes seizure must focus on the **impact** which the legislation has on the subject; not whether the regulatory body was, in fact, able to search the area and records and seize them.

(10) *Arkinstall Criteria*

66. Legislation that authorizes search and seizure in a quasi-criminal investigation must provide for: that an entirely neutral arbiter, who passes on the appropriateness of the proposed search and seizure has ‘*reasonable grounds to believe*’ that the individual is committing, will commit or has committed the offence; has ‘*reasonable grounds to believe*’ that the proposed search and seizure will afford evidence of the particularized breaches under investigation; and the records seized are strictly relevant to the offence under investigation.
67. The BCCA in [*Arkinstall*](#) provided an analytical framework to determine if there are any justifications for a more flexible standard to the *Hunter* test in the regulatory sphere: reasonable expectation of privacy and intrusiveness; stigma; feasibility of obtaining a warrant; and usefulness of a warrant.
68. The greater an individual’s expectation of privacy and the more intrusive a search is, the more likely it is the *Hunter* criteria will be required. The less frequent these intrusions are, the more stigma associated with such investigations. The court looks to the ease or difficulty in obtaining an administrative search and seizure order versus a search warrant ordered versus a justice. The courts look to the assessment that the arbiter is required to undertake, the expense and the frequency of such warrantless searches and seizures.
69. Lawyers practice in offices or in their homes, or a combination of both. In fairness to the Legislature and the arguments made by the LSBC at the Court of Appeal in 2016 (i.e. the search and seizure does not depend on location), the heightened expectation of privacy in private dwellings will be **lessened** in the context of administrative searches and seizures

where the dwelling also serves as the workplace in a regulated industry (see: *Comité paritaire* at 424). The issue is how much it is lessened in the hierarchy of place.

However, in order to make copies or extract of those records and “other evidence”, the LSBC will need to enter where the records and other evidence are located. Further, the Impugned Provisions, in light of the devastating effects of not complying to such authorizations, that the **Impugned Provisions** must be assessed as if they authorize entry *per se* to where the LSBC investigators and forensic auditors are empowered to search and seize all records (personal, business, unrelated, confidential, or solicitor-client privileged) and “other evidence”. As such, the search will necessarily be intrusive with respect to territory.

**(11) The Definitive Distinction between “reasonable suspicion”
versus “Reasonable Grounds to Believe”**

70. To the extent one speaks of a “reasonable belief” in the context of “*reasonable suspicion*”, it is a reasonable belief that an individual ***might*** be connected to a particular offence, as opposed to a reasonable belief that an individual ***is*** connected to the offence (see: [R. v. MacKenzie, 2013 SCC 50](#)). Reasonable suspicion is a lower standard, as it engages the reasonable possibility, rather than probability, of “any misconduct”.

71. “*Reasonable grounds to believe*” and “probable cause”, as found in the Fourth Amendment to the American Constitution, are identical standards (see: [R. v. Debot, \[1989\] 2 S.C.R. 1140](#) at page 1166). “Reasonable suspicion” is a less demanding standard than “probable cause in the following ways: **content of information**: not only in the sense that reasonable suspicion can be established with information that is *different* in **quantity** or **content** than that required to establish probable cause; but reliability of **information**: also in the sense that reasonable suspicion can arise from information that is *less reliable* than that required to show **probable cause**.

72. *Less reliable information* could justify **reasonable suspicion**, though **not** ‘*reasonable grounds to believe*’. A ‘reasonable suspicion’ standard may be sufficient where the

investigative technique is *relatively non-intrusive* and the expectation of privacy is **not high** (see: [R. v. Kang-Brown, 2008 SCC 18](#), para 168).

(12) *The subject of ‘Subject to a solicitor-client privilege’*

73. The AGBC submitted that search and seizure power elsewhere in the legislation would be interpreted as ***not extending*** so far to authorize access to solicitor-client privileged material. However, the right for current and former members to object to the production of confidential records was extinguished in 1992 (see: **Appeal Book, pages 190-192**). It repealed whatever rights members had left to object to production and access in 1992 under administrative search and seizure orders granted by the **LSBCDC** in the discipline context. Moreover, any rights that members had under the other sections to object to production of records, which were solicitor-client privileged or confidential, were completely abolished by way of the *Legal Profession Amendment Act 2012*. The comment, which the AGBC relies upon in *FLS*, related to “audits” of members but there is no challenge to s. 33 of the LPA. The expectation of the privacy in one’s private property and confidential, highly personal, irrelevant or records subject to a solicitor-client privilege is extremely high. The Legislature explicitly states under the “Explanatory Notes” of Bill 40 that a person must produce records, subject to a solicitor-client privilege, **regardless** of the solicitor-client privilege and those seized records are admissible. In [Canada \(Attorney General\) v. Federation of Law Societies of Canada, 2015 SCC 7, \[2015\] 1 S.C.R. 401 \[“FLS”\]](#), the SCC found the heightened standard applicable to searches implicating solicitor-client privileged material, **regardless** of context. The word “require” is mentioned 53 times under the LPA (the word “required” is subsumed under that) and the word “requiring” is mentioned 9 times. Members or persons are required under the Act to produce records under ss. 26(4), 27(c), s. 33(1) (only books and accounts), 36(d) (records and “other evidence”), 37(1), 41(2) and 51(d). 36(i) and 37.1 only apply to s. 26, s. 36(b) and s. 37.

(13) Reviewability under s. 8

74. An unreviewable and discretionary power of search and seizure would be contrary to section 8 (see: [Goodwin](#) at paragraph 70). The authorization made under s. 36(b) is a decision and/or order. Section 47 governs the right to review a decision on the record but that only applies to decision of a panel under section 22(3) or 38(5)(6), (6.1) or (7) by an applicant or respondent within 30 days of being notified of the decision. If dissatisfied the decision under s. 38, the **LSBCDC** may, in its prosecutorial capacity, seek a review on the record by a seven person review board. A member, who is served with the decision that there will be a search and seizure of her records and other evidence along with personal information and records subject to a solicitor-client privilege, must consent to the terms in the order (short of violating the law) but does not have an internal legislative right of review. Each panel includes **one Benchers**, one lawyer who is **not** a Benchers and one public representative who is **not** a lawyer.
75. It is then necessary to determine if the Legislature has denied the current or former member the right to appeal an order made under ss. 36(b) and (c) under s. 48. The member, who has been served with a warrantless search and seizure order under s. 36, would certainly not be a person under a, c or d of s. 48. An “applicant” means a person who has applied for enrollment as an articulated student, call and admission, or reinstatement (see: LPA, s. 1(1)).
76. Under the LSBC’s procedure it is not as they have a single Chair of the **LSBCDC** grant or refuse such applications. However, that is not the question asked in this appeal. It is whether the language used by the Legislature would deny the member of his or her right of appeal under the LPA. If one break downs the 2018 **LSBCDC** committee: Christopher McPherson, Brook Greenberg, Jasmin Ahmad, Barbara Cromarty, Dean Lawton, and Heidi Zetzsche are benchers but also lawyers; Michael Feder, Julianne Lamb are lawyers but not benchers; and Roland Krueger, CD and Carolyn Ryan are **not** lawyers.
77. Although the Legislature did empower the LSBC benchers to delegate any and all authority and responsibility to the **LSBCDC**, it was specific in using the language of the “Discipline Committee” and not Chair of the Discipline Committee. The definition of

respondent then becomes seminal and it is defined as "**respondent**" means a person whose conduct or competence is the subject of a hearing or an appeal under this Act. The notion of appeal is not relevant in relation to authorized investigations under ss. 36(b).

The Legislature has carefully and meticulously referenced "conduct of competence" four times under the LPA, 26(2), 36(e), (f), and 38(3)(b). 26(2) empowers the benchers to make rules authorizing investigation (not hearings) into the conduct or competence of lawyers. 36(e) requires a lawyer or articled student to appear before the benchers, a committee or other body to discuss the conduct or competence of the lawyer or articled student. 36(f) authorize the ordering of a hearing into the conduct or competence of a lawyer or an articled student, or the conduct of a law firm, by issuing a citation and 38(3)(b) requires a panel to give written reasons for the determination about the conduct or competence of the respondent and any action taken against which, of course, applies to the hearing of a citation that is authorized by ss. 36(f). Ergo, a member, who has been served with an order regarding an authorized disciplinary investigation pursuant to the power under s. 36(b), **neither** has a legislative right of review under s. 47 **nor** a legislative right of appeal under s. 48.

78. Like *Goodwin*, this case is **not** about the reasonableness of two LSBC forensic auditors and the former RCMP sergeant conducting the search and seizure against the appellant. It concerns a more fundamental issue: *whether the law authorizing the warrantless search and seizure is itself reasonable*.

(14) Section 1 of the Charter

79. In the **absence of any evidence** to show that the objectives of legislation would be frustrated by adherence to having that there be entirely independent and neutral arbiter(s) capable of acting judicially and there not be any reasonable apprehension of bias regarding members on hearing panels for citation hearings or interim suspension hearings, it is **impossible** to conclude that a member's right to a fair hearing would be minimally impaired. Rather, it would simply require that a member, who is not a member of the Discipline Committee, be selected from hearing pool panel. In the absence of any evidence to show that the objectives of the Act would be frustrated by adherence to the *Hunter*

criterion that there be an entirely independent and neutral arbiter capable of acting judicially, it is **impossible** to conclude that the s. 8 *Charter* rights would be minimally impaired. To the contrary, it would not even require the LSBC to apply to the Supreme Court of British Columbia as the person need not be a judge as per the SCC in *Hunter*. This means that while the person considering the prior authorization **need not be a judge**, he or she must nevertheless, at a minimum, be capable of acting judicially. *Inter alia*, he or she must **not** be someone charged with investigative **or** prosecutorial functions under the relevant statutory scheme. Rather, it would merely require the same threshold to be met for authorizing searches and seizures of members' records and other evidence under the very same Act but under s. 27(b) (c) which is "Practice Standards". In relation to the right to a fair hearing, the learned chambers judge did not apply the legal tests in this regard to not only members of an investigative and prosecutorial regulatory committee sitting on adjudicative hearing panels in the same year but she did not consider the test of reasonable apprehension of bias with respect to herself. It is a question of law.

80. To the extent there is a finding that some or all of ss. 36(a), (b), (d), (i) and 37.1 are not inconsistent with s. 8 of the *Charter* under the usual balancing of interests, the Legislature's deliberate choice of language under ss. 88(1.1) compelling persons to produce records subject to a solicitor-client privilege, where the usual balancing is not particularly helpful, the requirement scheme itself would be unreasonable contrary to s. 8 under that analysis. The question is one of law. Finally, even if all of the **Impugned Sections** were found not be inconsistent with s. 8 with respect to the standard of granting and executing warrantless search and seizure orders, the unavailability and inadequacy of a legislative review or appeal within the *LPA* for lawyers coupled with the coercive elements and penal sanctions render the authorizations granted under either ss. 36(b) or (c) unreasonable.

PART 4: NATURE OF ORDERS SOUGHT

81. The appellant seeks the relief in relief in filed Notice of Appeal the Notice of Constitutional Question herein. In light of the appellant having standing and this being public interest litigation, he defers to the Court of Appeal on costs.

82. All of Which is Respectfully Submitted:

Dated at the City of Vancouver, Province of British Columbia, December 21, 2018



Kevin A. McLean

Appellant

APPENDIX: ENACTMENTS

THE CONSTITUTION ACT, 1982,

being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 Part I - CANADIAN *Charter OF RIGHTS AND FREEDOMS*

CANADIAN *Charter OF RIGHTS AND FREEDOMS*

Whereas Canada is founded upon principles that recognize the supremacy of God and the rule of law:

GUARANTEE OF RIGHTS AND FREEDOMS **Rights**

and freedoms in Canada

1. The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

LEGAL RIGHTS **Life,**

liberty and security of person

7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

Search or seizure

8. Everyone has the right to be secure against unreasonable search or seizure.

PART VII

Primacy of Constitution of Canada

(1) The Constitution of Canada is the supreme law of Canada, and any law that is inconsistent with the provisions of the Constitution is, to the extent of the inconsistency, of no force or effect.

CONSTITUTIONAL QUESTION ACT

R.S.B.C. 1996, c. 68

Notice of questions of validity or applicability

8 (1) In this section:

(2) If in a cause, matter or other proceeding

(a) the constitutional validity or constitutional applicability of any law is challenged, or

(b) an application is made for a constitutional remedy,

the law must not be held to be invalid or inapplicable and the remedy must not be granted until after notice of the challenge or application has been served on the Attorney General of Canada and the Attorney General of British Columbia in accordance with this section.

4) The notice must

(a) be headed in the cause, matter or other proceeding,

(b) state

(i) the law in question, or

(ii) the right or freedom alleged to be infringed or denied,

(c) state the day on which the challenge or application under subsection (2) or (3) is to be argued, and

(d) give particulars necessary to show the point to be argued.

(5) The notice must be served at least 14 days before the day of argument unless the court authorizes a shorter notice.

JUDICIAL REVIEW PROCEDURE ACT

R.S.B.C. 1996, C. 241

Definitions

1 In this Act:

"application for judicial review" means an application under section 2;

"court" means the Supreme Court;

"decision" includes a determination or order;

"record of the proceeding" includes the following:

- (a) a document by which the proceeding is commenced;
- (b) a notice of a hearing in the proceeding;
- (c) an intermediate order made by the tribunal;
- (d) a document produced in evidence at a hearing before the tribunal, subject to any limitation expressly imposed by any other enactment on the extent to which or the purpose for which a document may be used in evidence in a proceeding;
- (e) a transcript, if any, of the oral evidence given at a hearing;
- (f) the decision of the tribunal and any reasons given by it;

"statutory power" means a power or right conferred by an enactment

- (a) to make a regulation, rule, bylaw or order,
- (b) to exercise a statutory power of decision,
- (c) to require a person to do or to refrain from doing an act or thing that, but for that requirement, the person would not be required by law to do or to refrain from doing,
- (d) to do an act or thing that would, but for that power or right, be a breach of a legal right of any person, or
- (e) to make an investigation or inquiry into a person's legal right, power, privilege, immunity, duty or liability;

"statutory power of decision" means a power or right conferred by an enactment to make a decision deciding or prescribing

"statutory power of decision" means a power or right conferred by an enactment to make a decision deciding or prescribing

(a) the legal rights, powers, privileges, immunities, duties or liabilities of a person, or

(b) the eligibility of a person to receive, or to continue to receive, a benefit or licence, whether or not the person is legally entitled to it,

and includes the powers of the Provincial Court;

"tribunal" means one or more persons, whether or not incorporated and however described, on whom a statutory power of decision is conferred.

ADMINISTRATIVE TRIBUNALS ACT

S.B.C. 2004, C. 45

Immunity protection for tribunal and members

56 (1) In this section, **"decision maker"** includes a tribunal member, adjudicator, registrar or other officer who makes a decision in an application or an interim or preliminary matter, or a person who conducts a facilitated settlement process.

(2) Subject to subsection (3), no legal proceeding for damages lies or may be commenced or maintained against a decision maker, the tribunal or the government because of anything done or omitted

(a) in the performance or intended performance of any duty under an enactment governing an application, or

(b) in the exercise or intended exercise of any power under an enactment governing an application.

(3) Subsection (2) does not apply to a person referred to in that subsection in relation to anything done or omitted by that person in bad faith.

LEGAL PROFESSION ACT

S.B.C, 1987 C. 25

40.(1) Where the chairman of the discipline committee or, in his absence, a member of the executive committee, has '*reasonable grounds to believe*' that a member, former member or articulated student

(a) has contravened this Act or a rule made under it, or

- (b) has conducted himself in a manner that could result in a determination being made under section 45(1)(b) or (c), he may apply, ex parte or on notice as the judge requires, to a judge of the Supreme Court for an order that
 - (c) the books and accounts of the member or former member be audited, and
 - (d) the files or other records of or relating to the member or former member be seized from the person named in the order.
 - (2) Where the application under subsection (1) is in relation to the conduct of an articulated student, the order may be made in respect of the books, accounts, files or other records of the member or firm to whom the student is articulated.
 - (3) In an application under subsection (1), the person making the application shall state on oath,
 - (a) his grounds for believing the matter referred to in subsection (1)(a) or (b), or
 - (b) where the application is for an order under subsection (1)(d), his grounds for believing that the seizure will produce evidence relevant to a matter referred to in subsection (1)(a) or (b).
 - (4) In an order under subsection (1), the court may
 - (a) designate the person who will conduct the audit, inspection or seizure and authorize him to conduct it,
 - (b) state the time and place where the audit or seizure will take place, and
 - (c) give any other directions that are necessary to carry out the audit or seizure.
- 41.(1) The discipline committee may inquire into the conduct or competence of a member, former member or articulated student.
- (2) The discipline committee may make or authorize a preliminary investigation into the conduct or competence of any of the persons referred to in subsection (1) and may order that the person produce for inspection files or other records relative to his practice that are within his possession or power.
 - (3) An inquiry under subsection (1) shall be by hearing commenced by the issue of a citation to the respondent at the direction of (a) the chairman of the discipline committee, or (b) any 3 benchers.
 - (4) At a hearing of a citation, the committee may, where it considers it necessary for the effective conduct of the inquiry,
 - (a) compel the respondent to give evidence under oath, and

- (b) order the respondent to produce all files and records that are in his possession or power that are relevant to the matters raised in the citation.

Legal Profession Amendment Act, 1992

Discipline committee

39. (1) The treasurer shall appoint a discipline committee consisting of a chair and vice chair, both of whom shall be benchers, and such other benchers and members of the society as the treasurer may determine, for terms of office determined by the treasurer.

- (2) The treasurer may remove any person appointed under subsection (1).
- (3) The discipline committee may consider the conduct or competence of a member, former member or articulated student and may conduct or authorize any person to conduct an investigation into the conduct or competence of the member, former member or articulated student.
- (4) Where the chair, vice chair or another bencher member of the discipline committee believes that a member or former member may have committed any misconduct, conduct unbecoming a member of the society or breach of this Act or the rules made under it, that bencher may order that an investigation be made of the books, records and accounts of the member or former member.
- (5) Where an order is made under subsection (4), the secretary shall designate one or more persons to conduct the investigation.
- (6) Where an order is made under subsection (4), the member or former member concerned shall immediately produce and permit the copying of all files, vouchers, records, accounts, books and any other evidence and shall furnish such explanations as the persons designated by the secretary under subsection (5) require for the purpose of the investigation.
- (7) The discipline committee may require a member, former member or articulated student to appear before the committee or before another

body provided for in the rules, to discuss the conduct or competence of the member, former member or articulated student.

- (8) The chair of the discipline committee or any 3 benchers may order a hearing into the conduct or competence of a member, former member or articulated student by directing that a citation be issued against the member, former member or articulated student.
- (9) The discipline committee may rescind a citation at any time before a panel makes a determination under section 45.

Powers of discipline committee member to apply to Supreme Court

40. (1) The chair, vice chair or another bencher member of the discipline committee may apply to a judge of the Supreme Court for an order that files or other records, wherever located, of or relating to a member, former member or articulated student be seized from the person named in the order, if the bencher has '*reasonable grounds to believe*' that a member, former member or articulated student may have committed or will commit any

(a) misconduct;

(b) conduct unbecoming a member of the society, or (c)

breach of this Act or a rule made under it.

- (1.1) An application under subsection (1) may be made without notice to anyone or on such notice as the judge requires.
- (2) Where the application under subsection (1) is in relation to the conduct of an articulated student, the order may be made in respect of the books, accounts, files or other records of the member or firm to whom the student is or was articulated.
- (3) In an application under subsection (1), the person making the application shall state on oath the grounds for believing the matter referred to in subsection (1) and the grounds for believing that the seizure will produce evidence relevant to that matter.
- (4) In an order under subsection (1), the court may

- (a) designate the person who will conduct the seizure and authorize that person to conduct it;
- (b) state the time and place where the seizure will take place, and
- (c) give any other directions that are necessary to carry out the seizure.

Historical Note(s): 1987-25-40; 1989-64-13; 1992-74-11.

Discipline hearings

41. (1) Where a citation has been issued under section 39 (8),

- (a) the respondent shall be served with the citation in accordance with the rules, and
- (b) the treasurer shall establish a panel under section 54.1 to conduct a hearing, make a determination under section 45 and take action, where appropriate, under section 46.

(2) A person who has participated in the decision to direct that a citation be issued must not

- (a) serve as a member of the panel, or
- (b) sit as a benchler on a review by the benchers under section 47 or 48.

(3) A panel may

- (a) compel the respondent to give evidence under oath, and
- (b) at any time before or during a hearing, order the respondent to produce all files and records that are in the respondent's possession or control that may be relevant to the matters raised in the citation.

Historical Note(s): 1992-74-12; 1993-31-22.

Confidential documents

42. (1) Where a member or former member is

- (a) served with an order under section 35 (2) (b), 40 (1) or (2) or 41 (3) (b), or
- (b) required to produce information, files or records under section 37 (3) (b)

and the member or former member objects to the production of a document on the grounds that the document is confidential and that a client objects to its disclosure, the document shall be sealed without inspection or copying and placed into the custody of

- (c) any member acceptable to both the member or former member and the society, or (d) a sheriff.

(2) Where a document is sealed under subsection (1), the member shall provide the society with the name and address of the client whose document it is.

(3) The person having custody of a sealed document shall return the document to the member or former member unless the society delivers within 30 days to the person having custody

- (a) a written waiver of confidentiality signed by the client, or
- (b) the secretary's certification that the client has been contacted and has given an oral waiver of confidentiality;

in which case, the person having custody shall deliver the document to the secretary.

(4) A judge of the Supreme Court may, upon application,

- (a) extend the time period referred to in subsection (3);
- (b) where the client cannot be located, order that the sealed document be delivered to the society on conditions as to notice or substitutional service that the court considers just, and
- (c) examine the sealed document and any affidavit evidence that the judge considers relevant, and

- (i) if the judge is of the opinion that the document should not be disclosed, ensure that it is resealed and order the person having custody to return the document to the member or former member, or,
- (ii) if the judge is of the opinion that the document should be disclosed, order the person having custody to deliver the document to the secretary, subject to such restrictions or conditions as the judge considers appropriate.

Historical Note(s): 1987-25-42; 1992-74-13.

Non-disclosure of privileged and confidential information

57. (1) A person who, in the course of carrying out duties under this Act, becomes privy to information, files or records that are confidential or are subject to solicitor and client privilege, has the same obligation respecting the disclosure of that information as the member from whom the information, files or records were obtained.

(2) A member, former member or articulated student who, in accordance with this Act, provides the society with any information, files or records that are confidential, or subject to a solicitor and client privilege shall be deemed not to have breached any duty or obligation that he would otherwise have had to the society or the client not to disclose the information, files or records.

(3) A person who, during the course of an appeal under section 58 or an application under the *Judicial Review Procedure Act* with respect to a matter under this Act, becomes privy to information or records that are confidential or are subject to solicitor and client privilege, shall not

(a) utilize the information other than for the purpose for which it was obtained, or

(b) disclose the information to any person.

(4) The Court of Appeal, on an appeal under section 58, and the Supreme Court, on an application under the *Judicial Review Procedure Act* with respect to a matter under this Act, may exclude members of the public from the hearing of the appeal or application where the court

considers the exclusion is necessary to prevent the disclosure of information, files or records that are confidential or subject to solicitor and client privilege.

(5) In the giving of reasons for judgment on an appeal or application referred to in subsection (4), the Court of Appeal or the Supreme Court, as the case may be, shall take all reasonable precautions to avoid including in those reasons any information before them on the appeal or application that is confidential or subject to solicitor and client privilege.

(6) The benchers may make rules that they consider necessary or advisable for the purpose of ensuring the non-disclosure of any confidential information or information that, but for the provisions of this Act, would be subject to solicitor and client privilege, and the rules may be made applicable to any person who, in the course of any proceeding under this Act, would become privy to the confidential or privileged information.

LEGAL PROFESSION ACT

S.B.C 1996, C. 255 Section

040 — Discipline committee

40 (1) The treasurer must appoint a discipline committee consisting of a chair and vice chair, both of whom must be benchers, and those other benchers and members of the society that the treasurer may determine, for terms of office determined by the treasurer.

(2) The treasurer may remove any person appointed under subsection (1).

(3) The discipline committee may consider the conduct or competence of a member, former member or articulated student and may conduct or authorize any person to conduct an investigation into the conduct or competence of the member, former member or articulated student.

(4) If the chair, vice chair or another bencher member of the discipline committee believes that a member or former member may have committed any misconduct, conduct unbecoming a member of the society or breach of this Act or the rules made under it, that bencher may order that an investigation be made of the books, records and accounts of the member or former member.

- (5) If an order is made under subsection (4), the secretary must designate one or more persons to conduct the investigation.
- (6) If an order is made under subsection (4), the member or former member concerned must immediately produce and permit the copying of all files, vouchers, records, accounts, books and any other evidence and must provide any explanations that the persons designated by the secretary under subsection (5) require for the purpose of the investigation.
- (7) The discipline committee may require a member, former member or articulated student to appear before the committee or before another body provided for in the rules, to discuss the conduct or competence of the member, former member or articulated student.
- (8) The chair of the discipline committee or any 3 benchers may order a hearing into the conduct or competence of a member, former member or articulated student by directing that a citation be issued against the member, former member or articulated student.
- (9) The discipline committee may rescind a citation at any time before a panel makes a determination under section 47.

Section 042 — Powers of discipline committee member to apply to Supreme Court

- 42** (1) The chair, vice chair or another bencher member of the discipline committee may apply to a judge of the Supreme Court for an order that files or other records, wherever located, of or relating to a member, former member or articulated student be seized from the person named in the order, if the bencher has *'reasonable grounds to believe'* that a member, former member or articulated student may have committed or will commit any
- (a) misconduct,
 - (b) conduct unbecoming a member of the society, or
 - (c) breach of this Act or a rule made under it.
- (2) An application under subsection (1) may be made without notice to anyone or on such notice that the judge requires.
 - (3) If the application under subsection (1) is in relation to the conduct of an articulated student, the order may be made in respect of the books, accounts, files or other records of the member or firm to whom the student is or was articulated.
 - (4) In an application under subsection (1), the person making the application must state on oath the grounds for believing the matter referred to in subsection (1)

and the grounds for believing that the seizure will produce evidence relevant to that matter.

(5) In an order under subsection (1), the court may

- (a) designate the person who will conduct the seizure and authorize that person to conduct it,
- (b) state the time and place where the seizure will take place, and
- (c) give any other directions that are necessary to carry out the seizure.

Section 043 — Discipline hearings

43 (1) If a citation has been issued under section 40 (8),

- (a) the respondent must be served with the citation in accordance with the rules, and
- (b) the treasurer must establish a panel under section 59 to conduct a hearing, make a determination under section 47 and take action, if appropriate, under section 48.

(2) A person who has participated in the decision to direct that a citation be issued must not

- (a) serve as a member of the panel, or
- (b) sit as a bench on a review by the benchers under section 49 or 50.

(3) A panel may

- (a) compel the respondent to give evidence under oath, and
- (b) at any time before or during a hearing, order the respondent to produce all files and records that are in the respondent's possession or control that may be relevant to the matters raised in the citation.

Section 063 — Non-disclosure of privileged and confidential information

63 (1) Despite section 14 of the *Freedom of Information and Protection of Privacy Act*, a person who, in the course of carrying out duties under this Act, becomes privy to information, files or records that are confidential or are subject to solicitor and client privilege, has the same obligation respecting the disclosure of that information as the member from whom the information, files or records were obtained.

(2) A member, former member or articulated student who, in accordance with this Act, provides the society with any information, files or records that are confidential, or subject to a solicitor and client privilege is deemed not to have breached any duty or obligation that he or she would otherwise have had to the society or the client not to disclose the information, files or records.

Legal Profession Act,

SBC 1998, c 9

Definitions

"lawyer" means a member of the society, and

- (a) in Part 2, Division 1, includes a member of the governing body of the legal profession in another province or territory of Canada who is authorized to practise law in that province or territory,
- (b) in Parts 4 to 6 and 10 includes a former member of the society, and
- (c) in Part 10 includes an articulated student;

Practice standards

27 (2) The benchers may make rules to do any of the following:

- (a) establish a practice standards committee and delegate any or all authority and responsibility under this section, other than rule-making authority, to that committee;
- (b) permit an investigation into a lawyer's competence to practise law if
 - (i) there are '*reasonable grounds to believe*' that the lawyer is practising law in an incompetent manner, or
 - (ii) the lawyer consents;
- (c) require a lawyer whose competence to practise law is under investigation to answer questions and provide access to information, files or records in the lawyer's possession or control;
- (f) permit the discipline committee established under [section 36](#) (a) to consider

Part 4 — Discipline

Discipline rules

36 The benchers may make rules to do any of the following:

- (a) establish a discipline committee and delegate any or all authority and responsibility under this Part, other than rule-making authority, to that committee;
- (b) authorize an investigation of the books, records and accounts of a lawyer or law firm if there is reason to believe that the lawyer or law firm may have committed any misconduct, conduct unbecoming the profession or a breach of this Act or the rules;
- (c) authorize an examination of the books, records and accounts of a lawyer or law firm;
- (d) require a lawyer or law firm to cooperate with an investigation or examination under paragraph (b) or (c), including producing records and other evidence and providing explanations on request;
- (i) establish a process for the protection of the privacy and the severing, destruction or return of personal, business or other records that are unrelated to an investigation or examination and that, in error or incidentally, form part of
 - (i) the books, records or accounts of a lawyer, an articulated student or a law firm authorized to be investigated or examined under a rule made under paragraph (b) or [section 26](#), or
 - (ii) files or other records that are seized in accordance with an order of the Supreme Court under [section 37](#).

Search and seizure

- 37** (1) The society may apply to the Supreme Court for an order that the files or other records, wherever located, of or relating to a lawyer, an articulated student or a law firm be seized from the person named in the order, if there are ‘*reasonable grounds to believe*’ that the lawyer, the articulated student or the law firm may have committed or will commit
- (a) any misconduct,
 - (b) conduct unbecoming the profession, or (c) a breach of this Act or the rules.

- (2) An application under subsection (1) may be made without notice to anyone or on such notice as the judge requires.
- (3) If the application under subsection (1) is in relation to the conduct of an articulated student, the order may be made in respect of the books, accounts, files or other records of the student's principal or the principal's firm.
- (4) In an application under subsection (1), the person making the application must state on oath or affirmation the grounds for believing the matter referred to in subsection (1) and the grounds for believing that the seizure will produce evidence relevant to that matter.
- (5) In an order under subsection (1), the court may
 - (a) designate the person who will conduct the seizure and authorize that person to conduct it,
 - (b) state the time and place where the seizure will take place, and
 - (c) give any other directions that are necessary to carry out the seizure.

Personal records in investigation or seizure

37.1 In conducting an investigation or examination of books, records or accounts under [section 26](#) or rules made under [section 36](#) (b) or in the seizure of files or other records in accordance with an order of the Supreme Court under [section 37](#), the society may collect personal information unrelated to the investigation or examination that, in error or incidentally, is contained in those books, accounts, files or records, but the society must, subject to rules made under [section 36](#) (i),

- (a) return that personal information if and as soon as practicable, or
- (b) destroy that personal information.

Discipline hearings

- 38** (1) This section applies to the hearing of a citation.
- (2) A hearing must be conducted before a panel.
- (3) A panel must
 - (a) make a determination and take action according to this section,
 - (b) give written reasons for its determination about the conduct or competence of the respondent and any action taken against the respondent, and
 - (c) record in writing any order for costs.
- (4) After a hearing, a panel must do one of the following:
 - (a) dismiss the citation;
 - (b) determine that the respondent has committed one or more of the following:
 - (i) professional misconduct;
 - (ii) conduct unbecoming the profession;
 - (iii) a breach of this Act or the rules;

(iv) incompetent performance of duties undertaken in the capacity of a lawyer;

(v) if the respondent is an individual who is not a member of the society, conduct that would, if the respondent were a member, constitute professional misconduct, conduct unbecoming the profession or a breach of this Act or the rules. (c)[Repealed 2012-16-27.]

(5) If an adverse determination is made under subsection (4) against a respondent other than an articulated student or a law firm, the panel must do one or more of the following:

(a) reprimand the respondent;

(b) fine the respondent an amount not exceeding \$50 000;

(c) impose conditions or limitations on the respondent's practice;

(d) suspend the respondent from the practice of law or from practice in one or more fields of law

(i) for a specified period of time,

(ii) until the respondent fulfills a condition imposed under paragraph (c) or subsection (7) or complies with a requirement under paragraph (f) of this subsection,

(iii) from a specified date until the respondent fulfills a condition imposed under paragraph (c) or subsection (7) or complies with a requirement under paragraph (f) of this subsection, or

(iv) for a specified minimum period of time and until the respondent fulfills a condition imposed under paragraph (c) or subsection (7) or complies with a requirement under paragraph (f) of this subsection;

(e) disbar the respondent;

(f) require the respondent to do one or more of the following:

(i) complete a remedial program to the satisfaction of the practice standards committee;

(ii) appear before a board of examiners appointed by the panel or by the practice standards committee and satisfy the board that the respondent is competent to practise law or to practise in one or more fields of law;

(iii) appear before a board of examiners appointed by the panel or by the practice standards committee and satisfy the board that the respondent's competence to practise law is not adversely affected by a physical or mental disability, or dependency on alcohol or drugs;

(iv) practise law only as a partner, employee or associate of one or more other lawyers;

(g) prohibit a respondent who is not a member but who is permitted to practise law under a rule made under section 16 (2) (a) or 17 (1)

- (a) from practising law in British Columbia indefinitely or for a specified period of time.
- (6) If an adverse determination is made under subsection (4) against an articulated student, the panel may do one or more of the following:
 - (a) reprimand the articulated student;
 - (b) fine the articulated student an amount not exceeding \$5 000;
 - (c) extend the period that the articulated student is required to serve under articles;
 - (d) set aside the enrolment of the articulated student.
- (6.1) If an adverse determination is made under subsection (4) against a law firm, the panel may do one or both of the following:
 - (a) reprimand the law firm;
 - (b) fine the law firm an amount not exceeding \$50 000.
- (7) In addition to its powers under subsections (5), (6) and (6.1), a panel may make any other orders and declarations and impose any conditions or limitations it considers appropriate.
- (8) A fine imposed under this Act may be recovered as a debt owing to the society and, when collected, it is the property of the society.
- (9) For the purpose of recovering a debt under subsection (8), the executive director may
 - (a) issue a certificate stating that the fine is due, the amount remaining unpaid, including interest, and the name of the person required to pay it, and
 - (b) file the certificate with the Supreme Court.
- (10) A certificate filed under subsection (9) with the Supreme Court is of the same effect, and proceedings may be taken on it, as if it were a judgment of the Supreme Court for the recovery of a debt in the amount stated against the person named in it.

Suspension

- 39** (1) The benchers may make rules permitting 3 or more benchers to do any of the following until the decision of a hearing panel or other disposition of the subject matter of the hearing:
- (a) suspend a respondent who is an individual, if the respondent's continued practice would be dangerous to the public or the respondent's clients;
 - (b) impose conditions or limitations on the practice of a respondent who is an individual;
 - (c) suspend the enrolment of a respondent who is an articulated student;
 - (d) impose conditions or limitations on the enrolment of a respondent who is an articulated student.
- (2) Rules made under subsection (1) must
- (a) provide for a proceeding to take place before an order is made,

- (b)set out the term of a suspension, condition or limitation, and
 - (c)provide for review of an order made under subsection (1) and for confirmation, variation or rescission of the order.
- (3)Rules made under this section may provide for practice and procedure for a matter referred to in subsection (2) (a) and (c) and may specify that some or all practices and procedures in those proceedings may be determined by the benchers who are present at the proceeding.

Non-disclosure of privileged and confidential information

88 (1)[Repealed 2012-16-46.]

(1.1)A person who is required under this Act or the rules to provide information, files or records that are confidential or subject to a solicitor client privilege must do so, despite the confidentiality or privilege.

(1.2)Information, files or records that are provided in accordance with subsection (1.3) are admissible in a proceeding under Part 2, 3, 4 or 5 of this Act, despite the confidentiality or privilege.

(1.3)A lawyer who or a law firm that, in accordance with this Act and the rules, provides the society with any information, files or records that are confidential or subject to a solicitor client privilege is deemed conclusively not to have breached any duty or obligation that would otherwise have been owed to the society or the client not to disclose the information, files or records.

***FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT,
R.S.B.C 1996, C. 165***

Purpose for which personal information may be collected

26 A public body may collect personal information only if

- (a)the collection of the information is expressly authorized under an Act,
- (b)the information is collected for the purposes of law enforcement,
- (c)the information relates directly to and is necessary for a program or activity of the public body,

List of Authorities

Authorities	Page # in factum	Para # in factum
<i>Baldwin Janzen Insurance Services (2004) Ltd. v. Janzen</i> , 2006 BCSC 554	10	25
<i>Bishop v. College of Physicians and Surgeons of B.C.</i> , 1985 CanLII 569 (B.C.S.C.); affirmed at BCCA, 1986 CanLII 989 [“ <i>Bishop</i> ”]	7, 22	16, 61
<i>British Columbia Securities Commission v. Branch</i> , [1995] 2 SCR 3 [“ <i>Branch</i> ”]	5	11
<i>British Columbia (Minister of Forests) v. Okanagan Indian Band</i>, 2003 SCC 71	16	46
<i>Burlington Resources Canada Ltd. v. Peace River (Assessor of Area #27)</i>, 2005 BCCA 72	19	47
<i>Canada (Information Commissioner) v. Canada (Prime Minister)</i> , [1993] 1 FCR 427, 1992 CanLII 2414 (F.C.).[“ <i>Information Commissioner</i> ”]	21	49
<i>Canada (Attorney General) v. Chambre des notaires du Québec</i> , [2016] 1 SCR 336 [“ <i>Chambre</i> ”]	18	49

<i>Comité paritaire de l'industrie de la chemise v. Potash; Comité paritaire de l'industrie de la chemise v. Sélection Milton</i> , [1994] 2 SCR 406, 1994 CanLII 92 (SCC)	22	60
<i>Dr. Henderson v. The College of Physicians and Surgeons of Ontario</i> , 2003 CanLII 10566 (O.N.C.A.) [“ <i>Dr. Henderson</i> ”]	21	58

<i>Gardner v. Law Society of British Columbia</i> , 1990 CanLII 409 (B.C.S.C); and <i>Gardner v. Law Society of British Columbia</i> , 1991 CanLII 1157 (B.C.C.A)	7	18
<i>Green v. Law Society of Manitoba</i> , 2017 SCC 20 [“Green”]	4	11
<i>Goodwin v. British Columbia (Superintendent of Motor Vehicles)</i> , 2015 SCC 46 [“Goodwin”].	1	3
<i>Hunter et al. v. Southam Inc.</i> , [1984] 2 SCR 145 [“Hunter”]	21	57
<i>Kikla v. Ayong</i> 2016 BCSC 465, affirmed 2016 BCCA 486 (“ Kikla ”)	3	7
<i>McLean v. Law Society of British Columbia</i> , 2016 BCCA 368	5	12
<i>McLean v Law Society of British Columbia</i> , 2017 BCSC 987	3	8
<i>Mulgrew v. The Law Society of British Columbia</i> , 2016 BCSC 1279 [“Mulgrew”]	2	4
<i>Ocean Port Hotel Ltd. v. British Columbia (General Manager, Liquor Control and Licensing Branch)</i> , [2001] 2 SCR 781	5	10
<i>Quinn v. British Columbia</i> , 2018 BCCA 320 (“ Quinn ”).	3	7
Peter W. Hogg, <i>Constitutional Law of Canada</i> , (Toronto: Thomson Carswell, 2005)	17	47
<i>R. v. Kang-Brown</i> , 2008 SCC 18	26	72
<i>R. v. Debot</i> , [1989] 2 S.C.R. 1140	25	71
<i>R. v. Law</i> , [2002] 1 SCR 227	22	60
<i>R. v. MacKenzie</i> , 2013 SCC 50	25	70

<i>Schachter v. Canada</i> , [1992] 2 SCR 679 [“ <i>Schachter</i> ”]	7	18
<i>Thomson Newspapers Ltd. v. Canada</i> , 1990 CanLII 135 (S.C.C.) [“ <i>Thomson</i> ”]	8	19
<i>Toronto (City) v. C.U.P.E., Local 79</i> , 2003 SCC 63 (“ CUPE ”)	3	7

PART I: FACTS

(a) Introduction

2. Mr. McLean’s consolidated written argument (the “**Consolidated Brief**” or “**Consolidated Memorandum of Argument**”) moors all of the factual contexts, pleadings, documentary evidence, oral evidence, admissions and controlling authorities into one consolidated document. The purpose of the Consolidated Brief is to assist this Honourable Court, particularly whichever **justice** hears some or all of the future hearings, in understanding the background along with the applying the settled law to the uncontroverted evidence.

3. The following proceedings are addressed in the **Consolidated Brief**:
 - a. S-1711429 Petition under the *CQA* filed in December 2017 (the “**LPA Petition**”)
 - b. S-180372 Petition under the *CQA* filed in January 2018 (the “**LSBC Rules Petition**”)
 - c. S-175785 Petition under the *JRPA* filed in July 2017 (the “**JRPA Petition**”)
 - d. S-1410056 Action filed in December 2014 (the “**Damages Action**”); and
 - e. S-173987 Action filed in April 2017 (the “**Malicious Prosecution Action**” or “MP Action”)

(collectively, the “**McLean Proceedings**”)

4. In relation to the *LPA Petition* and *LSBC Rules Petition*, Mr. McLean has legally standing.
5. The AGBC and LSBC has not challenged his standing. With an abundance of caution and so the argument need not be further canvassed, the legal test to meet standing has long been established since 1981 *Minister of Justice (Can.) v. Borowski*, [1981] 2 SCR 575 [*“Borowski”*] as follows:

To establish status as a plaintiff in a suit seeking a declaration that **legislation is invalid**, if there is a serious issue as to its validity, a person **need only to show** that he is affected by it directly **or** that he has a **genuine interest** as a citizen in the validity of the legislation and that there is no other reasonable and effective manner in which the issue may be brought before the Court.

6. The test is disjunctive. The Petitioner meets both with ease. The AGBC misstates the legal test below by only mentioning one branch of the test.
7. Further, both the *LPA Petition* and *LSBC Rules Petition* meet the test for **public interest litigation** as follows:
 - a. issues raised transcend the individual interests of the particular litigant;
 - b. are of public importance; and
 - c. have not been resolved in previous cases.
8. “**Lawyer**” means a member of the society, and

(a)in Part 2, Division 1, includes a member of the governing body of the legal profession in another province or territory of Canada who is authorized to practise law in that province or territory,

(b)in Parts 4 to 6 and 10 includes a former member of the society, and (c)in Part 10 includes an articulated student

(see: *LPA*, s. 1(1))

9. The **Impugned Sections**, defined in the NOCQ in the *LPA* Petition, and **Impugned Rules**, defined in the NOCQ in the LSBC Rules Petition, affect all members and former members which include *Charter* rights, 7 through 10 along with the right of privilege of the member and “persons”.

10. **"Person"** includes a corporation, partnership or party, and the personal or other legal representatives of a person to whom the context can apply according to 1a (see: *IA*, s. 29).

11. These public importance issues have not been resolved in previous cases.

(b) *LPA Petition*

12. This *LPA* Petition involves a challenge to sections 11(1-3), 36(a-d, and i), 37.1, 41 (2), and 88(1.1 to 3) of the *Legal Profession Act*, S.B.C. 1998, C. 9 and amendments thereunder (the “*LPA*”) (collectively, the “**Impugned Sections**”) (the “***LPA* Petition**”).

13. For sake of convenience, the amendments to the *LPA* by way of the *Legal Profession Amendment Act, 2012* read as follows in bold with the underlining bringing attention to certain sections:

The *LPA* Post May 14, 2012: Amendments and Enactments

The bolding sections denote the amendments and enactments to the *LPA*:

Discipline rules

36 The benchers may make rules to do any of the following:

- (a) establish a Discipline Committee and delegate any or all authority and responsibility under this Part, other than rule-making authority, to that committee;
- (b) authorize an investigation of the books, records and accounts of a lawyer if there is reason to believe that the lawyer may have committed any misconduct, conduct unbecoming a lawyer or a breach of this Act or the rules;
- (c) authorize an examination of the books, records and accounts of a lawyer or law firm;
- (d) require a lawyer or law firm to cooperate with an investigation or examination under paragraph (b) or (c), including producing records and other evidence and providing explanations on request;
- (h) permit the benchers to summarily suspend or disbar a lawyer convicted of an offence that was proceeded with by way of indictment or convicted in another jurisdiction of an offence that, in the opinion of the benchers, is equivalent to an offence that may be proceeded with by way of indictment;
- (i) establish a process for the protection of the privacy and the severing, destruction or return of personal, business or other records that are unrelated to an investigation or examination and that, in error or incidentally, form part of (i) the books, records or accounts of a**

lawyer, an articulated student or a law firm authorized to be investigated or examined under a rule made under paragraph (b) or section 26, or
(ii) files or other records that are seized in accordance with an order of the Supreme Court under section 37.

Personal records in investigation or seizure

37.1 In conducting an investigation or examination of books, records or accounts under section 26 or rules made under section 36 (b) or in the seizure of files or other records in accordance with an order of the Supreme Court under section 37, the society may collect personal information unrelated to the investigation or examination that, in error or incidentally, is contained in those books, accounts, files or records, but the society must, subject to rules made under section 36 (i),

(a) return that personal information if and as soon as practicable, or

(b) destroy that personal information.

Non-disclosure of privileged and confidential information 88

(1) [Repealed 2012-16-46.]

(1.1) A person who is required under this Act or the rules to provide information, files or records that are confidential or subject to a solicitor client privilege must do so, despite the confidentiality or privilege.

(1.2) Information, files or records that are provided in accordance with subsection (1.3) are admissible in a proceeding under Part 2, 3, 4 or 5 of this Act, despite the confidentiality or privilege.

(1.3) A lawyer who or a law firm that, in accordance with this Act and the rules, provides the society with any information, files or records that are confidential or subject to a solicitor client privilege is deemed conclusively not to have breached any duty or obligation that would otherwise have been owed to the society or the client not to disclose the information, files or records.

14. The Petitioner has duly provided notice to the Attorney General of Canada (“AGC”), the AGBC, LSBC, the BC Civil Liberties ASSOCIATION and Canada Civil Liberties ASSOCIATION (see: *CQA*, s. 8(2)). The AGBC is the **only** entity that has filed a Response to the *LPA Petition*.
15. The Petitioner filed the *LPA Petition* on December 11, 2017 as it is a challenge involving the proceeding is brought in respect of an application that is **authorized** by an enactment to be made to the court (see: **SCCR, Rule 2-1(2)**). It also involves the construction of an enactment (see: **SCCR, Rule 2-1(3)**). The Petitioner had some correspondence with counsel for the AGBC in Ms. Sarah Bevan (“Ms. Bevan”) previous via email so he served her via email on December 17, 2017. Not until mid-January 2018 did Ms. Bevan object to the service in said fashion despite acknowledging receipt and there not being any issue with the opening of attachment therein. The Petitioner was surprised by said conduct but pushed the matter forward.
16. This Petitioner and the AGBC appeared before The Honourable Madam **Justice** Watchuk (“**Madam Justice Watchuk**”) on Friday, February 2, 2018 and she ordered that the hearing of the Petition proceed for **two days** on the lengthy chambers list. The AGBC did not seek to appeal or vary that order. It was supposed to proceed on April 4 and 5, 2018 but the Petitioner was injured in an accident and unable to move for several days, and obtained treatment at the hospital and thereafter.

AGBC Procedural Challenges and Counters

17. The AGBC has brought four procedural challenges:

- a. the Petitioner has **only** relied on SCCR 2-1(c);
- b. the petition is misconceived in challenging statutory provisions rather than the subordinate legislation;
- c. no factual context for the constitutional challenge; and
- d. the petition is duplicative of other proceedings and is an abuse of process.

18. The issue with the Supreme Court Civil Rules shall be resolved by an application to amend which remains outstanding. The factual context is identified above with evidence and chronology. There is no dispute with the facts or evidence. This is the only proceeding that challenges the Impugned Sections.
19. To be clear, the Petitioner submits that the **McLean Proceedings**, on liability alone, can be disposed of by way of the *LPA* Petition as per the settled common law in *Schachter* (see: **BOA, Tab 18**) and the hierarchical nature of parent legislation versus inferior regulation.
20. The issue as to whether the challenge is properly to the enabling statute or the subordinate rules is for an Honourable **Supreme Court Justice** to determine. The Petitioner submits that it varies based on the challenged or impugned legislative section versus the challenged impugned rule. With great respect, the AGBC's analysis is rather **imprecise** about whether each challenged section of the *LPA* confers a precise discretion upon the LSBC *to limit* members' and/or persons' *Charter* rights.
21. The procedural challenges contain no merit and the substance of this public interest litigation should be heard first as the Impugned Sections affects members and persons currently and prospectively.
22. This is particularly apposite when a "person" is obligated to disclose records that are confidential or "subject to a solicitor-client privilege". The issue was a live one in *Mulgrew* but the Honourable Mr. **Justice** Butler exercised his discretion not to decide it on the ground of mootness (see: **BOA Tab 7, *Mulgrew*, para 57**).

(c) LSBC RULES PETITION

23. The **LSBC Impugned Rules** are as follows:

Investigation of complaints

3-5 (1) Subject to subrule (3), the Executive Director may, and **on the instruction** of the **Discipline Committee must**, investigate a complaint to determine its validity.

(2) For the purpose of conducting an investigation under this division and section 26 [*Complaints from the public*], the Executive Director may designate an employee of the Society or appoint a practising lawyer or a person whose qualifications are satisfactory to the Executive Director.

(3) The Executive Director may **decline** to investigate a complaint if the Executive Director is satisfied that the complaint

(a) is outside the jurisdiction of the Society,

(b) is frivolous, vexatious or an abuse of process, or

(c) does not allege facts that, if proven, would constitute a discipline violation.

(4) The **Executive Director must deliver to the lawyer** who is the subject of a complaint a copy of the complaint or, if that is not practicable, a summary of it.

(5) Despite subrule (4), if the Executive Director considers it necessary for the effective investigation of the complaint, the Executive Director may **delay notification of the lawyer**.

(6) When acting under subrule (4), the Executive Director may decline to identify the complainant or the source of the complaint.

(7) A lawyer **must** co-operate fully in an investigation under this division by all available means including, **but not limited to**, responding fully and substantively, in the form specified by the Executive Director

(a) to the complaint, and

(b) to all requests made by the Executive Director in the course of an investigation.

(8) When conducting an investigation of a complaint, the Executive Director may

(a) **require production** of **files**, documents and **other records** for examination or **copying**,

(b) require a lawyer to

(i) attend an interview,

(ii) answer questions and provide information relating to matters under investigation, or

(iii) cause an employee or agent of the lawyer to answer questions and provide information relating to the investigation,

(c) **enter the business premises** of a lawyer

(i) during **business hours**, or

(ii) at another time by agreement with the lawyer.

(9) Any written response under subrule (7) **must** be signed by

(a) the lawyer personally, or

(b) a representative of the law firm, if the complaint is about a law firm.

(10) The Executive Director may deliver to the complainant a copy or a summary of a response received from the lawyer, subject to solicitor and client privilege and confidentiality.

- (11) A lawyer who is **required** to **produce files**, documents and **other records**, provide information or attend an interview under this rule **must** comply with the requirement
- (a) *even if* the information or files, documents and other records are **privileged** or confidential, **and**
 - (b) as soon as practicable and, in any event, by the time and date set by the Executive Director.

[(9) amended 04/2018]

Failure to produce records on complaint investigation

3-6 (1) Subject to subrules (2) and (3), a lawyer who is **required** under Rule 3-5 [*Investigation of complaints*] or 4-55 [*Investigation of books and accounts*] to **produce** and permit the copying of files, documents and other **records**, provide information or attend an interview and answer questions and who **fails** or **refuses** to do so **is suspended** *until* he or she has complied with the requirement to the *satisfaction* of the Executive Director.

(2) When there are *special circumstances*, the **Discipline Committee may**, in *its discretion*, **order** that

- (a) a lawyer **not be suspended** under subrule (1), or
- (b) a suspension under this rule be **delayed** for a specified period of time.

(3) At least 7 days before a suspension under this rule can take effect, the Executive Director **must** deliver to the lawyer notice of the following:

- (a) the date on which the suspension will take effect;
- (b) the reasons for the suspension;
- (c) the means by which the lawyer *may apply* to the **Discipline Committee** for an order under subrule (2) and the deadline for making such an application before the suspension is to take effect.

Investigation of books and accounts

4-55 (1) If the chair of the **Discipline Committee** *reasonably believes* that a lawyer or former lawyer *may have committed a discipline violation*, the chair *may order* that an investigation be made of the books, records and accounts of the **lawyer or former lawyer**, including, if considered *desirable in the opinion* of the chair, **all electronic records** of the lawyer or former lawyer.

(2) When electronic records have been produced or copied pursuant to an order under this rule, the lawyer concerned *may request* that a specific record be **excluded** from the investigation on the basis that **it contains personal information** that is not relevant to the investigation.

(3) The lawyer **must make** a request under subrule (2) in writing to a person designated under subrule (6) within 7 days of receiving a copy of the order under this rule.

(4) An **order** under this rule that permits the production or copying of electronic records **must** provide for a method of evaluating and adjudicating exclusion requests made under subrule (2).

(5) A request under subrule (2) **must be refused** *unless* the records in question *are retained in a system of storage of electronic records* that **permits the segregation of personal information** in a *practical manner* in order to comply with the request.

(6) When an order is made under subrule (1),

(a) the Executive Director **must** designate one or more persons to conduct the investigation, and

(b) the lawyer or former lawyer concerned **must**

(i) **immediately produce** and permit the **copying** of all files, vouchers, records, accounts, books and any **other evidence** *regardless of the form* in which they are kept,

- (ii) provide any explanations that the persons designated under paragraph (a) require for the purpose of the investigation,
- (iii) *assist the persons* designated under paragraph (a) to access, in a comprehensible form, records in the lawyer's possession or control that *may contain* information related to the lawyer's practice by providing all information necessary for that purpose, including but not limited to
 - (A) **passwords**, and
 - (B) **encryption keys**, and
- (iv) not alter, delete, destroy, remove or otherwise interfere with any book, record or account within the scope of the investigation without the written consent of the Executive Director.

(d) JRPA Petition

24. The Honourable Mr. **Justice** Grauer found as follows in S-1410056 in July 2017 at paragraphs below:

[66] The first question is whether the Law Society *exceeded* its **statutory jurisdiction** when it granted the **investigation order**; in other words, was the order *ultra vires* the Law Society? If so, it **must be set aside**.

[67] The second question is whether, *assuming that it had jurisdiction* to grant the order, the Law Society nevertheless acted improperly in the manner in which it **granted the order**, giving rise to *procedural unfairness*, so that the order **must be set aside** and, presumably, remitted to the Chair of the **Discipline Committee**. On this aspect, Mr. McLean relies upon: the **failure** of Mr. Riddell to give reasons for his decision to grant the order; the **absence of information under oath** to support the decision; the fact that the order was granted *without notice* to

Mr. McLean; the **absence of procedural safeguards** (such as would, for instance, be available in an application for an *Anton Pillar* order, to which Mr. McLean likens the investigation order); and the conflict of interest that arises

from what Mr. McLean terms a **solicitor-client relationship** that existed between Mr. Bussanich and Mr. Riddell.

[68] If **either** of those two questions were resolved in favour of Mr. McLean, then it *would follow* that the steps taken by the Law Society in carrying out the order were **unlawful**. The question of consent becomes **immaterial**.

25. His Lordship did not fully delineate and particularize all of the issues that Mr. McLean relied upon to set aside the **SSO**. All of the independent and disjunctive grounds that Mr. McLean relied upon are addressed *infra*. To be clear, it is not just that Mr. Bussanich and Mr. Riddell were in a solicitor-client relationship and that the application was “PRIVILEGED AND CONFIDENTIAL” (the “PCA”) but that the Discipline Committee cannot be adjudicating on a proposed search and seizure of a member in light of its admitted investigative and prosecutorial functions. It is trite that where there is a constitutional challenge to such a legislative provision, it must be dealt with first.
26. Although Mr. Justice Grauer termed it an “investigation order”, such an order was found to be a seizure at law in Branch at all three levels of court (see: BOA, Tab 20)
27. His Lordship neglected to deal with the issue of the measure of the **Impugned Rules** against the *Charter* which is now before the court with the correct procedure by way of Petition.
28. The Petitioner did **not** “term it” a solicitor-client relationship but the documents listed and produced by Mark Bussanich and Philip Riddell in the **Damages Action**, which were between them, were not available for inspection on the unequivocal grounds that they were protected by solicitor-client privilege. The Plaintiff challenged them that the documents were not properly particularized and listed but his application was dismissed on the basis, *inter alia*, that there was a sufficient description for the Plaintiff to determine the validity of the privilege.

29. The orders granted a Chair of the LSBC **Discipline Committee** (the “**COD**” or “**LSBCCOD**”) are idiosyncratic and unique to each object of the order due to the objects ranging in individuals, persons and law firms. Further, the practices and storage of records varies from persons to law firms along with the location and mediums of storage.

Ergo, one member’s Petition for judicial review under the *JRPA* may be different than others. As noted, the **COD** hears and decides the application and determines whether the seizure should be a forensic one in extending to electronic records. Although difficult to imagine, there are some lawyers in the province who do not make use of computers or modern technology and such an order will vary between that substrata of individuals. That being said, the test that the **COD** employs is straightforward: *reasonable belief a member may have committed a “misconduct”* (see: XFD of ADM, Part I, Chronology).

“Misconduct” is not defined under the *LPA*.

30. The LSBC has, improperly on a multitude of occasions, attempted to **mislead** the court about the *legal test* employed by the **ADM** in the case at bar and other administrative decision makers for **ASSO**’s. Specifically, it would use words like “reasonable grounds being shown” and the “reasonable belief having to be reasonably grounded”. These were clear attempts to elevate the test used by **COD**’s when the test they use is not such an elevated test as required by *Hunter* (see: **BOA Tab 17**)

31. The **ADM**’s evidence goes in by way of **admission** in that he was unequivocal in the test that he employed. LSBC Rule 4-55 is self-evident. The Privileged and Confidential Application (“**PCA**”) is self-evident. The scope and breadth of the **SSO** is self-evident. It **refused to admit** that a requirement to produce records is a seizure at law like it did in *Mulgrew* and the misled the court even after the admission in *Mulgrew*.

32. The patently obvious reason is that once it admitted that a *requirement to produce* is a seizure at law, the **Impugned Rules**, the **ASSOS** and admitted practices amount to search and seizures but with a complete absence of safeguards are required by the Supreme Court of Canada.

33. The LSBC's apparent answer is that "**deference**" should be shown to its **Impugned Rules** and practices. This is incorrect in the context of the **Consolidated Brief** in that the challenges to the **Impugned Rules** have been to their constitutionality when measured against the *Charter* which is governed by a standard of **correctness**. Moreover, the challenges to the commencement of the **SSO Proceeding**, ordering of the **SSO**, and execution therefrom are also constitutional challenges along with challenges under the headings of natural **justice**, procedural fairness, independence, bias, reasonable apprehension of bias, absence of reasons et al wherein no **deference** is shown.
34. *Hunter* (see: BOA Tab 17) is the default and presumptive test which requires the AGBC to meet four requirements when measuring the **Impugned Sections** against s. 8 of the *Charter*:
- (a) a system of prior authorization, by an entirely neutral and impartial arbiter who is capable of acting judicially in balancing the interests of the State against those of the individual;
 - (b) a requirement that the impartial arbiter **must** satisfy himself that the person seeking the authorization has reasonable grounds, established upon oath, to believe that an offence has been committed;
 - (c) a requirement that the impartial arbiter **must** satisfy himself that the person seeking the authorization has reasonable grounds to believe that something which will afford evidence of the particular offence under investigation will be recovered; and
 - (d) a requirement that the **only** documents which are authorized, by the entirely neutral arbiter to be seized are those which are strictly relevant to the offence under investigation.
35. To the extent that anything remains after a challenge to the *LPA* Impugned Sections, then then Impugned Rules will be measured against the *Hunter* test. To the extent anything remains thereafter, the SSO and the SSO Proceeding would be measured against the *Hunter* test.

36. The AGBC does not take a position on whether the **Impugned Rules**, the **SSO** and/or the **SSO** Proceeding contravene the *Charter* despite having notice and read the filed court documents regarding the same.

37. The Petitioner submits that the AGBC knows that **Impugned Rules** and the **SSO** contravene the *Charter* as the requirements are settled law and the Impugned Rules and the **SSO** are self-evident in their scope, breadth and impact on *Charter* values.

Invitation to the AGBC to discharge his duties

38. To the extent that the AGBC submits that the certain of the **Impugned Sections** are merely general (yet **empower** and authorize the LSBC to create some or all of the Impugned Rules and **SSO**), then the Impugned Rules are certainly not. The Petitioner forcefully submits that the AGBC is failing to discharge his duty by sitting idly particularly when he is also a benchler (see: *LPA*, s. 4(1)). The Petition, by way of this **Consolidated Brief**, is inviting the AGBC to discharge his duties in this regard and assist in the resolution of the legal issues for the benefit of members and persons in Canada.

(e) Damages Action and Malicious Prosecution Action

39. The Plaintiff commenced a Damages Action in 2014. Some of the individual defendants were excused from the proceeding due to their legislative immunities under various pieces of legislation. The Plaintiff was never provided with the name of the three investigators that entered his **private** closed door office at 1800-999 West Hastings Street, Vancouver, BC until after he had commenced the Damages Action. They were three individuals in Wendy Ho ("**Ho**"), Andrea Chan ("**Chan**") and David McCartney ("**McCartney**"). The LSBC would not consent to the adding of the aforementioned parties so the Plaintiff commencement the MP Action and then sought to consolidate the Damages Action and MP Action. The trial management conference (the "**TMC**") for the Damages Action and hearing to consolidate were set for June 2015 but Mr. **Justice** Grauer stayed the Damages Action pending a judicial review of the SSO or further order of the

court. The Plaintiff, in the MP Action, sought to discover the outstanding defendants yet they instructed counsel to seek a stay to avoid being discovered.

40. It is now well settled that professional disciplinary bodies and individuals with the **authority** to initiate proceedings before such bodies do **not** have immunity from suits for malicious prosecution (see: *Stoffman v. Ontario Veterinary Association* 1990 CanLII 6925 (O.N.S.C.)).

41. A claim for malicious prosecution is **not restricted** to criminal proceedings and can relate to administrative bodies as well (see: *Fouad v. Longman*, 2014 BCSC 785).

42. Malicious prosecution claims have **succeeded** when unfounded and malicious complaints have been made to professional associations, such as in the 2006 decision of PEI's Supreme Court, *Griffin v the City of Summerside*, 2006 PESCTD 15. and in which the above extract from *Remedies in Tort* was relied upon:

"By far, the majority of cases of malicious prosecution are found to originate in a criminal context. **However, there is no authority which has been cited which restricts a malicious prosecution action to a criminal proceeding.** The case at bar arises from a **disciplinary hearing** against Griffin. It is common ground among all the parties, with which I agree, that the tort of malicious prosecution is available to the plaintiff, Griffin, in this case. The onus is on him to prove the tort and each and every element of the tort."

43. The exercise of discretion is not to be arbitrary, vague or fanciful but legal and regular. A quasi-judicial tribunal **must** act honestly, impartially and in accordance with the essence of **justice** (see: *Roncarelli v. Duplessis*, SCC). It is unequivocal that that the **ADM** did not act impartially. Further, the submission (the LSBC having 'absolute discretion as to who they wish to prosecute') by the LSBC through their then counsel, Leonard Doust, who then subsequently quit on the LSBC after being served with a Notice of Hearing and Certificate of Readiness, was a misstatement of law. It was more than a misstatement of law in that it provided insight in the form of an admission as to how the LSBC's function as its core essence.

44. The primary issue is whether the **SSO Proceeding** initiated by the LSBC's Mark Bussanich, then staff lawyer by the LSBC and subsequently quit the LSBC, by way "Privileged and Confidential" application (the "PCA" or "**Privileged Application**") to his client Philip Riddell, Chair of the **Discipline Committee** ("**COD** ") and administrative decision maker ("**ADM**") under the BC *Administrative Tribunals Act* (the "*ATA*"), who granted the May 27, 2014 **ASSO** (the "**SSO**") and execution therefrom was a **malicious prosecution** against the member (the "**SSO Proceeding**"). Whether it was will clearly depend on the invalidity of the steps taken to obtain the **SSO**, the **SSO** itself and/or the steps taken to execute the **SSO** into the **private** office and personal residence of Mr. McLean.

45. To the extent the **SSO** is invalid, Mr. **Justice** Grauer correctly found that all steps (before and after) taken must be declared **unlawful**. There are not any cases where a regulatory body has unlawfully held a CPU for over four years with 20 years of data, records and information (some privileged of the member with his or her counsel). In refusing to return or destroy the forensic copy of Mr. McLean's hard drive, it has taken the penultimate risk in litigation.

(f) Comparison of Sections 24 and 52 of the Charter

46. Mr. McLean's position remains that he can dispose of each in isolation due to the constitutional failings in the *LPA* and the LSBC Rules.

47. The SCC found in *Schachter* (see: **BOA, Tab 18**), proceeding with a s. 52 analysis is the proper way of proceeding due to the **finality** that is associated with such an affirmative finding of **unconstitutionality** of some or all of the **Impugned Sections**:

A. Section 24(1) Alone

Where s. 52 of the *Constitution Act, 1982* is not engaged, a remedy under s. 24(1) of the *Charter* may nonetheless be available. This will be the case where the statute or provision in question is not in and of itself **unconstitutional**, but some action taken under it infringes a person's *Charter*

rights. Section 24(1) would there provide for an individual remedy for the person whose rights have been so infringed.

This course of action has been described as "reading down as an interpretive technique", but it is not reading down in any real sense and ought not to be confused with the practice of reading down as referred to above. It is, rather, founded upon a *presumption of constitutionality*. It comes into play when the text of the provision in question supports a constitutional interpretation and the violative action taken under it thereby *falls outside* the jurisdiction conferred by the provision. I held that this was the case in *Slaight Communications Inc. v. Davidson*, 1989 CanLII 92 (SCC), [1989] 1 S.C.R. 1038, when I determined that a provision which provided a labour adjudicator with discretion to make a range of orders **could not have been intended to provide him with the discretion to make unconstitutional orders**. The legislation itself was not **unconstitutional** and s. 52 was not engaged, but the aggrieved party was clearly entitled to an individual remedy under s. 24(1).

B. Section 24(1) in Conjunction with Section 52

An individual remedy under s. 24(1) of the *Charter* will rarely be available in conjunction with action under s. 52 of the *Constitution Act, 1982*.

Ordinarily, where a provision is declared unconstitutional and immediately struck down pursuant to s. 52, that will be the end of the matter.

48. In any event, the British Columbia Court of Appeal made the binding finding as to why the constitutionality of the legislation, irrespective of the validity of the actions taken by a regulatory body under them, should be heard first: (see: **BOA, Tab 19, Arkinstall**):

[41] In deciding this preliminary issue below, Smart J. said:

55 A preliminary issue is the propriety of addressing the constitutional issues raised on this petition. It is the position of the Attorney General that this case ought to be disposed of on administrative law grounds, and it counsels a course of judicial restraint with respect to the constitutional questions which it contends are better left to a case with a more fulsome set of facts. It says that at its root, the present case concerns **two decisions** of an administrative decision-maker: the decision to inspect the petitioners' residence, and the subsequent decision to order a disconnection of power when the petitioners refused to permit RCMP officers to accompany the EFSI Team. The Attorney General submits that if either decision was made without **authority**, the

petitioners should succeed in having it quashed and the petition should be resolved on that basis.

56 In my view, it is **not premature** to address the constitutional issues raised by the petitioners. While I recognize that authorities such as *R. v. Advance Cutting & Coring Ltd.*, 2001 SCC 70 (CanLII), [2001] 3 S.C.R. 209, caution judicial restraint in making constitutional decisions where a matter is capable of a decision on non-constitutional grounds, resolving the present case on the narrow basis proposed by the Attorney General **will not dispose of the dispute** between the petitioners and Surrey. *Even if* I were to find that either or both administrative decisions were made without **authority**, the petitioners *would remain subject* to a regulatory regime *that they contend* is **unconstitutional**. The ongoing relationship between Surrey, BC Hydro and the petitioners will continue to engage the impugned provisions of the SSA, and so to defer consideration of the constitutionality of the legislation would be to *leave important live issues* unresolved.

57 I am also satisfied that a **sufficient factual basis** exists for me to decide the constitutional issues that the petitioners raise.

49. As such, a disposition of the *LPA Petition* is most central to all of the **McLean Proceedings** and should be heard first. It is a simple matter of legislative hierarchy and SCC **authority**. If it were so disposed in Mr. McLean's favour, this would bring an end to the matter and dispose of the substance of the liability portion of S-1410056.

50. The pleading in S-1410056 underlies the issue in this regard in that Mr. McLean had consented to certain practice requirements such as a practice mentor, monthly trust reconciliations sent to the LSBC done by a *Chartered* Accountant. Ergo, the LSBC had full access to Mr. McLean, Mr. Robert King (Barrister and Solicitor) and Mr. Peter Stojakovic (*Chartered* Accountant) if there were any issue with trust accounting. The suspicious nature of the underlying motivation for the **SSO Proceeding** were multifold:

- a. Ms. Felicia Ciolfitto, Head of the LSBC Trust Assurance Department, had **fully reinstated** Mr. McLean to practice on January 29, 2014 after reviewing of Mr.

McLean's books, accounts and records with him, Kevin A. McLean Law Corporation and Mr. Stojakovic, CA;

- b. Mr. McLean had paid tens of thousands of dollars to Mr. Robert King in relation to their obligations pursuant to the Practice Supervision Agreement wherein much of the fees were due to various LSBC employees incessantly contacting Mr. King; and
- c. the LSBC had applied on March 25, 2014 to interim suspend the member from the practice of law which was to be heard subsequent to the **SSO**.

51. It is trite that the **PCA** of Mark Bussanich did not contain any attempt to exhaust any alternative remedies before ordering the **SSO** on an *ex parte* basis and without notice. The PCA was designed to do one thing and one thing only: obtain the **SSO** so it could authorize non-lawyer investigators to enter the office and home of Mr. McLean for the purposes of the forensic seizure of records which the LSBC knew contained records that were privileged, irrelevant and personal to him.

(g) CHRONOLOGY: 1982 TO 2018 OF UNCONTROVERTED FACTS AND LEGAL PRECEDENTS

52. The Petitioner has provided a chronology from **1984 to 2018** of the controlling authorities and uncontroverted facts and evidence to assist with resolution of the **outstanding undecided issues** of public importance.

Chronology and Evolution of Charter, Binding Authorities and Facts

Date	Event
1982	RE: GENESIS OF CANDIAN <i>CHARTER</i>  The <i>Charter</i> was signed into law by Queen Elizabeth II of Canada on April 17, 1982 , along with the rest of the Act (see: BOA, Tab 1)

1984	RE: LEGAL TEST FOR REGULATORY SEARCH AND SEIZURE AUTHORIZATIONS <i>Hunter v. Southam</i>, [1984] 2 SCR 145 (see: BOA, Tab 17, <i>Hunter</i>) Decision Date: September 17, 1984 ✚ The Supreme Court of Canada releases it is seminal decision regarding regulatory bodies granting their own internal ASSOs. This spawned the seminal and presumptive legal test (entirely independent arbiter,
	reasonable grounds, evidence under oath, and only seizure of strictly relevant records); ✚ Of particular note, the government made the same argument that the AGBC did in relation to the benchers being able to craft <i>Charter</i> compliant rules and the LSBC meeting the <i>Hunter</i> test in various proceedings against members. As stated by the SCC, “In this context, they contend, s. 10 does not authorize “unreasonable” search or seizure. Further, the appellants argue, the wording of s. 10 does not prevent the R.T.P.C. member in appropriate cases from requiring, for instance, evidence under oath before he approves the Director’s authorization.” ✚ It was rejected by the SCC, “At the outset it is important to note that the issue in this appeal concerns the constitutional validity of a statute authorizing a search and seizure. It does not concern the reasonableness or otherwise of the manner in which the appellants carried out their statutory authority. It is not the conduct of the appellants, but rather the legislation under which they acted, to which attention must be directed.” ✚ Note: the LSBC certainly acted and acts under s. 36 (a), (b), (d), (i) (i), 37.1 and 88 (1.1) (1.2) in relation to the SSO and ASSO

1985	RE: BCCA BINDING AUTHORITY FOR SEARCH AND SEIZURE AT LAW <i>Bishop v. College of Physicians and Surgeons</i>, 1985 CanLII 569 (B.C.S.C.) upheld at the Court of Appeal (see: BOA, Tab 13, Bishop, para 29) ✚ “The demand of Mr. Beere upon the plaintiff for the production of his patients' clinical records, his day sheets, appointment book and nursing home ledger for the purpose of temporarily removing them to be copied at the offices of the defendant constituted a search and a seizure notwithstanding the <i>refusal</i> of the plaintiff to comply with such demand.” (see: para 29). RE: PRECEDENT FOR RIGHT TO FAIR HEARINGS IN
	ADMINISTRATIVE CONTEXT <i>Cardinal v. Kent Institution</i>, 1985 CanLII 23 (see: BOA Tab 32, Cardinal) The Supreme Court of Canada unequivocally found: ✚ “The right to a fair hearing is an “independent, unqualified right which finds its essential justification in the sense of procedural justice which any person affected by an administrative decision is entitled to have.” (at p. 661) The court does not speculate as to how things may have unfolded if the decision-maker had complied with its duty of procedural fairness; and ✚ I find it necessary to affirm that the denial of a right to a fair hearing must always render a decision invalid, whether or not it <i>may appear</i> to a reviewing court that the hearing would likely have resulted in a different decision.”

February 12, 1986	RE: BCCA BINDING AUTHORITY FOR SEARCH AND SEIZURE AT LAW <i>Bishop v. College of Physicians and Surgeons</i>, 1986 CanLII 989 (B.C.C.A.) (see: BOA, Tab 13) ✚ This decision is upheld at the British Columbia Court of Appeal; and ✚ Note: the doctor context is the closest to the legal context due to issues of confidentiality and privilege in the records of the professional
December 8, 1988	RE: LEGAL PRECEDENT CONFIRMING THE DISJUNCTIVE NATURE OF S.8 OF THE CHARTER <i>R. v. Dyment</i>, 1988 CanLII 10 (S.C.C.) (see: BOA Tab 12, Dyment at para 25) ✚ The words are used disjunctively and although in instances it is a search and seizure that will be under scrutiny as was the situation in <i>Southam</i>, the <i>Charter</i> is worded so that a search or seizure <i>simpliciter</i> could offend against the section (see: para 25).
March 29, 1990	RE: LEGAL PRECEDENT DISTINGUISHING SUBPOENA DUCES TECUM FROM AN ADMINISTRATIVE SEARCH AND SEIZURE PROCEEDING <i>Thomson Newspapers Ltd. v. Canada (Director of Investigation and Research, Restrictive Trade Practices Commission)</i>, [1990] 1 SCR 425, 1990 CanLII 135 (SCC) (see: BOA Tab 14, Thomson) ✚ It is evident that the essential characteristic of the situation created by a search and seizure order (and clearly the only one that explains the reaction of both judges) is that a public officer is there bestowed with authority to force his way, at any time suitable to him and without warning, into the home or business premises of a person and search for and seize documents or things that he may lay his hands on. Such a characteristic is absolutely alien to the situation resulting from the service of a <i>subpoena duces tecum</i>, whatever the nature and the number of the documents asked for. (see: below part 4).

March 29, 1990	RE: SCC PRECEDENT THAT DEMAND FOR RECORDS IS A SEIZURE <i>R. v. McKinlay Transport Ltd.</i>, 1990 CanLII 137 (SCC) (see: BOA Tab 16, McKinlay) ✚ The <i>Income Tax Act</i> is essentially a regulatory statute which controls the manner in which income tax is calculated and collected
1990	RE: LEGAL PRECEDENT RELATING TO LSBC EXCEEDING ITS JURISDICTION IN AN ADMINISTRATIVE SEARCH AND SEIZURE OF A MEMBER <i>Gardner v. Law Society of British Columbia</i>, 1990 CanLII 409 (B.C.S.C.) ✚ For these reasons, I order that part of the February 23, 1990 resolution of the Discipline Committee related to the ordering of the spot audit be set aside. I order the return to the Petitioner of all documents, records or copies thereof in the possession of the Respondents or under their control, including all such materials in the possession or control of Mr. Kinsey obtained under the auspices or pursuant to the spot audit. RE: SCC PRECEDENT AND LEGAL TEST FOR WHETHER PROCEDURAL FAIRNESS IS ENGAGED AND REQUIRED <i>Knight v. Indian Head School Division No. 19</i>, 1990 CanLII 138 (S.C.C.) (see:

	BOA Tab 33, <i>Knight</i>). ✚ Evaluating whether procedural fairness, or the duty of fairness, has been adhered to by an administrative decision maker requires an assessment of the procedures and safeguards required in a particular situation. ✚ The SCC in <i>Knight</i> set the legal test out as follows: i. Administrative powers vs. legislative: administrative powers attract procedural fairness where legislative do not; ii. Final decisions attract procedural fairness; iii. Exercises of power pursuant to statute attract procedural fairness; and iv. Orders and decisions affecting individual's rights attract procedural fairness.
November 11, 1991	RE: BCCA PRECEDENT RELATING TO LSBC EXCEEDING ITS JURISDICTION IN AN ADMINISTRATIVE SEARCH AND SEIZURE OF A MEMBER <i>Gardner v. Law Society of British Columbia</i>, 1991 CanLII 1157 (B.C.C.A.) ✚ “As pointed out above, if Mr. Kinsey had merely audited the books and accounts related to Mr. Gardner's practice I doubt that intervention by the court would have been justified. It is the unauthorized search and seizure of documents and records, comprising not only Mr. Gardner's practice but his business and personal affairs also that is offensive.” ✚ Note: use of books and accounts versus the word “records”
1992	RE: LEGAL PRECEDENT OF S. 52 VERSUS S. 24; CONFIRMATION THAT ABSENCE OF PROCEDURAL SAFEGUARDS IN <i>HUNTER</i> WAS UNCONSTITUTIONAL <i>Schachter v. Canada</i> 1992 CanLII 679 (SCC) (see: BOA Tab 18, <i>Schachter</i>) ✚ In <i>Hunter</i>, the Court decided that the scheme for authorizing

	searches under the relevant legislation did not withstand <i>Charter</i> scrutiny. In such a circumstance, it would theoretically be possible to characterize the "extent of the inconsistency" as the absence of certain safeguards. Thus, in the <i>abstract</i>, the absence of appropriate safeguards could have been declared of no force or effect, which would have led to the establishment of the appropriate safeguards. RE: SCC PRECEDENT REGARDING INFRINGEMENT OF RULES OF PROCEDURAL FAIRNESS AND CONSEQUENCES THEREFROM <i>Newfoundland Telephone Co. v. Newfoundland (Board of Commissioners of Public Utilities)</i>, 1992 CanLII 84 (S.C.C.). [<i>"Newfoundland Telephone Co."</i>] (see: BOA, Tab 35) ✚ It is clear that when the rules of procedural fairness are infringed, a new hearing is generally thought to be required without regard to whether the impugned decision is right or wrong; the original order is void
May 5, 1993	RE: B.C. PRECEDENT REGARDING S. 7 WITH RESPECT TO PROFESSIONALS AND NO REQUIREMENT OF DEPRIVATION OF LIBERTY <i>Pierce v. Law Society of British Columbia</i>, [1993] B.C.W.L.D. 1416 (see: BOA, Tab 11, Pierce). ✚ Serious consequences flow from an adverse finding of a panel. Vagueness of language to a degree that permits a "standardless sweep" is contrary to principles of fundamental justice, whether or not the statute deprives a lawyer of his physical liberty. Where, as here, the right allegedly infringed is the right to practise a profession, fundamental justice militates against a lack of standards against which a member of that profession may measure his conduct. ✚ Note: during that time, there were single person panels

April 1995	13.	RE: LEGAL PRECEDENT REGARDING “INVESTIGATION ORDERS” BEING SEIZURES AT LAW AND CONSTITUTIONALITY (VALUES AT STAKE; NOT NAMES)

1997	<i>Branch v. British Columbia Securities Commission</i>, 1995 CanLII 142 (SCC) (see: BOA, Tab 20, Branch) ✚ A reinforcement case that the forced production of documents are seizures at law; ✚ Further, although termed an “investigation order”, it was a subpoena <i>duces tecum</i> which was and is a seizure at law; and ✚ The BCSC rebutted the presumption of unreasonableness of the search and seizure provision s.128(1) of the <i>Securities Act</i> as it did not contain intrusion into an office or home along with only compelling witnesses. RE: O.N.C.A. PRECEDENT FOR ORAL HEARING <i>Khan v. University of Ottawa</i>, 1997 CanLII 941 (O.N.C.A.) (see: BOA, Tab 34, Khan). ✚ The jurisprudence is clear that if <i>fact finding</i> and credibility are central issues, fairness requires those issues to be examined at an oral hearing even if the procedure before the administrative decision maker does not specifically require an oral haring RE: LEGAL PRECEDENT REGARDING STANDARD OF REVIEW WHEN NO REASONS ARE ISSUED BY THE ADM <i>Clifford v. Ontario Municipal Employees Retirement System</i>, 2009 ONCA 670 (see: BOA Tab 40, Clifford) ✚ The court cannot give deference to the choice of a tribunal whether to give reasons as the court must ensure that the tribunal complies with its legal obligation.
1999	

2001	RE: BCCA PRECEDENT REGARDING INDEPENDENCE AND REASONABLE APPREHENSION OF BIAS <i>Golden Valley Golf Course Ltd. v. British Columbia</i>, 2001 BCCA 392 (see: BOA Tab 21, <i>Golden Valley</i>) ✚ The question is only whether a reasonable apprehension of bias arises. The law draws a strict line in favor of procedural fairness even where the decision is one of an administrative tribunal as opposed to a
	court of law. Given the deference to which the rulings of such boards are entitled, this is, in my respectful view, as it should be (at para 44). Re: SCC PRECEDENT REGARDING STANDARD OF REVIEW FOR ISSUES OF PROCEDURAL FAIRNESS <i>Ellis-Don Ltd. v. Ontario (Labour Relations Board)</i>, 2001 SCC 4 [“<i>Ellis Don</i>”] (see: BOA Tab 29, para 65, <i>Ellis Don</i>) ✚ It is well established that questions of procedural fairness or natural justice are subject to the correctness standard: para 65.
September 12, 2002	Re: Legal Precedents regarding legislation that authorizes search and seizure of privileged records <i>Lavallee, Rackel & Heintz v. Canada (Attorney General)</i>; <i>White, Ottenheimer & Baker v. Canada (Attorney General)</i>; <i>R. v. Fink</i>, [2002] 3 SCR 209, 2002 SCC 61 (CanLII) (see: BOA Tab 25, <i>Lavalee</i>) ✚ The following binding principles were borne in relation to the issue of seizure of records subject to privilege in conjunction with binding case law: knowledge of privilege: an administrative search and seizure authorization should not issue for documents known to be protected by solicitor-client privilege; reasonable alternatives: an administrative search and seizure authorization should not issue if other reasonable alternatives to the law office search exist; arbiter rigorousness: the issuing administrative decision maker must be rigorously demanding with respect to solicitor-client privilege; sealed: all documents in a lawyer’s possession must be sealed before being examined or seized;

	e. panel should be seized: a panel of three or more should be seized of these decisions; f. type of applicant: applicant should be a lawyer outside of the LSBC as these types of authorizations are rare in any event. The LSBC regularly retains discipline counsel who are lawyers at outside firms; g. evidence under oath: the applicant must swear evidence under oath to support the application; h. legal test: it must be reasonable grounds as opposed to reasonable belief; i. lawyer and client communication: every effort must be made to contact the lawyer and the client when the search warrant is executed and, where the lawyer or the client cannot be contacted,

	an officer of the court should oversee the sealing and seizure of documents; j. issue of privilege should be decided of a panel capable of acting judicially: these privilege holders should then be given a reasonable opportunity to assert a claim of privilege and, if that claim is contested, to have the issue judicially decided; k. privilege holder notification: if notification of potential privilege holders is not possible, the lawyer who had custody of the documents seized should examine the documents to determine whether a claim of privilege should be asserted, and should be given a reasonable opportunity to do so. l. no inspection beforehand: the governmental body may make submissions on the issue of privilege but should not be permitted to inspect the documents beforehand, and the prosecuting authority can only inspect the documents if and when it is determined by a judge that the documents are not privileged; m. separate search order: although photocopying is a search (see: <i>R. v. Vu</i> later on as well), the governmental must obtain a separate search authorization to inspect the records; and n. immediate return: where documents are found to be privileged, they are to be returned immediately to the holder of the privilege, or to a person designated by the court.

June 5, 2003	RE: LEGAL PRECEDENT REGARDING PROFESSIONAL DISCIPLINE PROCEEDINGS BEING QUASI-CRIMINAL <i>Dr. Henderson v. The College of physicians and surgeons of Ontario</i>, 2003 CanLII 10566 (O.N.C.A.) (see: BOA Tab 9, Henderson) ✚ The underlying policy of the approach of strict construction of professional discipline statutes is based on the theory that the consequences for a person who is subject to the discipline process of his or her professional body carry potentially grave consequences, including the loss of one's livelihood; and ✚ Indeed, more than one case has referred to professional discipline proceedings as quasi criminal in nature. Re: SCC PRECEDENT REGARDING DEFINING AND CHARACTERIZING AN “UNREASONABLE DECISION” OF A TRIBUNAL <i>Law Society of New Brunswick v. Ryan</i>, [2003] 1 SCR 247 [“Ryan”] (see: BOA Tab 60, Ryan)

	✚ A decision will be unreasonable if there is “no lines of analysis within the given reasons” that could reasonably lead the tribunal from the evidence before it to the conclusion at which it arrived. Ergo, if there are no reasons, then the decision is automatically unreasonable.
January 19, 2004	Re: Legal Precedent regarding statutory interpretation <i>AXA Pacific Insurance Company v. Her Majesty The Queen In Right Of The Province Of British Columbia</i>, 2004 BCSC 69 (see: BOA Tab 6, Axa) ✚ Controlling authority on statutory interpretation principles Re: Legal Precedent that absence of reasons renders tribunal acting in arbitrary manner <i>Congrégation des témoins de Jéhovah de St-Jérôme-Lafontaine v. Lafontaine (Village)</i>, 2004 SCC 48 [“Congregation”] (see: BOA Tab 56, Congregation) ✚ The Chief Justice commented that the municipality acted in an arbitrary manner and straddled the boundary separating good from bad in failing to issue reasons.

September 30, 2004	RE: LSBC REVIEW BOARD DISTINGUISHED SUSPENSION FROM FINES <i>Re, Hordal</i> 2004 36 (see: BOA, Tab 10) ✚ LSBC Review board confirms that suspension is <i>far more serious</i> than fine and only for the most serious demonstrations of misconduct.
2004 to 2008	RE: LSBC NUMBERS FOR ADMINISTRATIVE SEARCH AND SEIZURE NUMBERS ✚ Law Society reports that 44 ASSO's had been granted and executed pursuant to their power under s. 36 of the <i>LPA</i> (see: BOA, Tab 5, LSBC FORENSIC SEARCH AND SEIZURE PAPER) Re: PRECEDENT LACK OF MEANINGFUL REASONS WARRANTS QUASHING WHEN MATTER IS OF IMPORTANCE (CITING <i>BAKER</i>) <i>Kalin v. Ontario College of Teachers</i> (2005), 2005 CanLII 18286 (O.N.S.D.C.) (see: BOA Tab 57, <i>Kalin</i>, para 60) ✚ [60] For a Tribunal such as this one, on issues of the importance involved here, the failure to provide meaningful reasons supporting its decision is itself a breach of the principles of natural justice that will warrant quashing the Tribunal's decision: <i>Baker, supra; Megens v. Ontario</i>
	<i>Racing Commission, supra.</i> RE: UNUSUAL CIRCUMSTANCES REQUIRE REASONS <i>Lerew v. St. Lawrence College of Applied Arts and Technology</i>, 2005 CanLII 11798 (see: BOA, Tab 46, Lerew) ✚ Unusual Circumstances: unusual circumstances surrounding the granting of a decision requiring the issuing of Reasons

November 3, 2006	RE: LEGAL PRECEDENT REGARDING DEFINITION OF “RECORDS” ✚ <i>Baldwin Janzen Insurance Services (2004) Ltd. v. Janzen</i>, 2006 BCSC 554 where the court held: “there is no dispute that data and information in electronic form are documents” (para. 28). It is well established by case law that computer hard drives and similar storage devices are records (see: BOA Tab 5, LSBC Forensic ASOO Paper, <i>Baldwin</i>) RE: LEGAL PRECEDENT REINFORCING <i>KANE</i> THAT DISCLOSURE REQUIREMENTS STANDARD FOR ADMINISTRATIVE TRIBUNALS – ONEROUS AND CONTINUOUS <i>Waxman v. Ontario Racing Commission</i>, 2006 CanLII 35617 (O.N.S.C.D.C.) (see: BOA Tab 36, <i>Waxman</i>). ✚ While the standard for disclosure in administrative law cases generally may be somewhat lesser, in cases involving the loss of one’s livelihood, disclosure cannot be much, if any, below the criminal standard (see: <i>Kane</i>); and ✚ The obligation to make disclosure is a continuing one. The Board has a positive obligation to ensure the fairness of its own processes. The failure to make a proper disclosure impacts significantly on the appearances of justice and the fairness of the hearing itself.
2008 - 2009	Re: Legal Precedent regarding impossibility to determine reasonableness of a decision absent reasons <i>Macdonald v. Mineral Springs Hospital</i>, 2008 ABCA 273 (see: BOA Tab 55, <i>MacDonald</i>) ✚ Without the benefit of the ADM’s reasoning about how it employed its

expertise to interpret its home statute, it is **impossible** to **determine** whether its decision was reasonable.

Re: LSBC Admissions about its administrative search and seizure process pursuant to its statutory powers under s. 11, 36 and 88 of *LPA* (see: BOA, Tab 5)

✚ In 2009, a five bencher authorial team released the **LSBC Forensic Seizure Paper** which provided its interpretation of its statutory powers under the *LPA*. The LSBC has submitted that Rule 3-5, 3-5.01 and Rule 4-43 (as they then were) are plainly authorized by the **Impugned Sections**.

✚ The authors made the following comments in relation to the rules that are passed within that framework:

- The 4-43 process is in some ways similar to an **Anton Piller order**, in that it proceeds *ex parte* and carries with it an element of **surprise** (see: **BOA**, Tab 5, Page 5, para 4);
- Rule 4-43 does **not** require a strong *prima facie* case to be met for the order to issue, whereas an Anton Piller order does (see: **BOA**, Tab 5, Page 5, footnote);
- Sections 11 and 36 of the *Legal Profession Act* **empower** the Benchers to make a **broad range of rules** to fulfill the Society's mandate. Sections 11 and 36 of the *Legal Profession Act* provide the Benchers with sufficient rule-making **authority** to “**deal**” with **digital records** (see: **BOA**, Tab 5, Page 7, para 3);
- There are **no words of limitation** contained in Rule 4-43 (see: **BOA**, Tab 5, Page 5, para 1);
- The investigators present the 4-43 order and covering letter to the lawyer. This information establishes that the lawyer **must allow** copying of records at the point of request, including making a **forensic copy**. The lawyer is provided a document setting out the process for how forensic copies are dealt with (see: **BOA**, Tab 5, Page 22, para 2, sub 3);
- The act of making a forensic copy of a hard drive takes a **snapshot of all of the information** on the hard drive at a point in time (see: **BOA**, Tab 5, page 3, paragraph 5, sentence 2);

	○ Some of the information captured in the forensic copy will be critical to the Law Society investigation, <u>but other information will not.</u> Of

	the latter, some of the information will be personal information for which the lawyer or a third party expects a degree of protection (see: BOA, Tab 5, Page 3, para 5); ○ The core issue the Working Group considered was how the Law Society can carry its outs investigative function to protect the public interest pursuant to s. 3 of the <i>Legal Profession Act</i>, while respecting a reasonable expectation of privacy a member under investigation has in personal information stored on digital records (see: BOA, Tab 5, Page 4, para 3); ○ While these cases are informative, most of them deal with disputes between civil litigants or between the state and the accused in a criminal matter; they do not deal with the authority of a regulatory body to copy and access records of its members (see: BOA, Tab 5, Page 4, para 3); ○ Reading the rule in its ordinary meaning and context and with regard to its purpose in the Act and Rules led the majority of the Working Group to conclude that a 4-43 order contemplates the ability to copy all records in order to examine a wide variety of matters for which lawyers are subject to regulation (see: BOA, Tab 5, Page 5, para 3); ○ Copying the record and letting the lawyer get on with his or her practice is <i>less disruptive</i>, and allows the lawyer under investigation to continue meeting the needs of his or her clients while the investigation is ongoing. The majority of the Working Group favoured the Benchers being able to modify the 4-43 process to make it clear forensic copying is permitted, and to establish a process to resolve disputes regarding access to information on the copied record (see: BOA, Tab 5, Page 6, para 2); ○ The majority recognized that this would likely involve copying personal information in circumstances where computer records are copied, but <i>felt</i> that spoke to the need for process safeguards to prevent improper access and use of such information, rather than speaking to the lack of authority to copy records necessary to prove a discipline violation has occurred (see: BOA, Tab 5, Page 6, para 4); ○ It is important to note that the decision to make a forensic copy is an investigative decision (see: BOA, Tab 5 Page 12, para 2);

	○ The Working Group concluded that this <i>loophole</i> creates an unnecessary risk (however remote) and that the Law Society Rules

should be amended to require lawyers to provide the necessary information, including decryption keys and passwords, to allow the Law Society to access records in a comprehensible form. Section 36(d) of the *Legal Profession Act* **empowers** the Benchers to make rules to “require a lawyer to cooperate with an investigation or examination under paragraph (b) or (c), including producing records and other evidence and providing explanations on request.” This section provides the **authority** for creating such a rule (see: **BOA, Tab 5, Page 17, para 3**); and

- When the Executive Committee discussed the topic of forensic copying, and decided to strike a working group to explore the policy issues arising from it, the question arose as to what happens when the **investigator uncovers material on the hard drive** that doesn’t relate to the investigation, but might be evidence of a crime or wrongdoing. The answer to this **depends on the nature** of the information that is uncovered, and the *reasonable apprehension* of the investigator as to whether the information may constitute a discipline violation, or a matter that **needs** to be **reported to another authority** (see: **BOA, Tab 5 Page 17, para 4**).

RE: LEGAL PRECEDENT REGARDING DISTINCTION BETWEEN ASSOS VERSUS JUDICIAL WARRANTS; REGULATORY APPLICANTS’ OBLIGATIONS IN *EX PARTE* APPLICATIONS FOR INTERNAL SEARCH AND SEIZURE ORDERS

Lemare Lake Logging Ltd. v. British Columbia (Minister of Forests and Range), 2009 BCSC 909 (see: **BOA, Tab 30, Lemare**)

✚ Having dealt with the **warrant** of search and seizure and the detention order, I turn to consider the pre-existing **administrative seizure order** carried out on February 20, 2009.

✚ [38] The Courts have consistently made it clear that a **party** involved in an *ex parte* process such as applying for a writ of search and seizure has a duty to make full and frank disclosure of material facts. See, for instance, *R. v. Araujo*, [2002] 2 S.C.R. 992 and *R. v. Ling*, 2009 BCCA 70 (CanLII). The scaling and merchandising process that had been explained to Mr. Smallacombe could in my view hardly have been more material to the issue of whether there was a **reasonable probability** that the seized timber would constitute evidence in support of the allegation of fraud against XY. That duty of disclosure was accordingly breached in this case.

	✚ [39] For this reason, I conclude that the warrant must be quashed. I am unable to accept the submission of counsel for the respondents that notwithstanding the omission, there were sufficient

	grounds for the granting of the warrant so that the missing facts would not have altered the result. The information that was omitted was key to all of the underlying facts contained in the information and fundamental to the whole issue that the JJP had to determine. ✚ [46] Counsel for the Crown argues that it was enough that Mr. Smallacombe believed that it had not been properly scaled and that it was awaiting transportation. I do not agree. The power to seize a company's stock in trade without a warrant is a drastic power indeed, and therefore must be <i>exercised precisely</i> in accordance with the governing statutory authority. In my view, that statutory authority contemplates action being taken in urgent circumstances where unscaled timber is being removed to a place other than where it must go to be scaled. This timber was at the place for scaling and had been scaled. If it was to be seized in these circumstances, a warrant was required. The ministry appeared to recognize this when Mr. Smallacombe applied not once, but twice for a warrant, notwithstanding that the timber had already been seized. ✚ [47] As we have seen, however, the warrant could not survive scrutiny and has been quashed. I therefore set aside the administrative seizure, which was undertaken without authority, and I order the respondents to return the seized timber to Lemare.

December 2010	Re: LSBC Rule changes regarding electronic records ✚ Rule 4-43 (Investigation of books and accounts) was updated to specifically refer to electronic records (see: BOA Tab 4) Re: Legal Precedent for administrative decision makers' requirements when issuing reasons <i>Law Society of Upper Canada v. Neinstein</i>, 2010 ONCA 193 ["Neinstein"] (see: BOA Tab 48) ✚ In providing reasons for a decision, a decision-maker must explain both what is being decided and why it is being decided (<i>Law Society of Upper Canada v. Neinstein</i> (2010), 2010 ONCA 193 (CanLII) (C.A.)). The obligation to give reasons -- to explain why it has reached the decision it has -- is part of the duty of procedural fairness ✚ A breach of the rules of procedural justice is a sufficient ground, standing alone, to quash the decision (see: <i>Clifford v. Ontario Municipal Employees Retirement System</i> (2009), 98 O.R. (3d) 210, [2009] O.J. No. 3900, 2009 ONCA 670(CanLII), at para. 22).

May 20, 2010	Re: Legal Precedent regarding <i>Hunter</i> standard in regulatory proceedings <i>Arkininstall v. City of Surrey</i>, 2010 BCCA 250 (see: BOA Tab 19, <i>Arkininstall</i>) ✚ Controlling authority on determining the applicability of <i>Hunter</i> standard based on four factors: - Intrusiveness and REOP; - Stigma associated the administrative search and seizure; - feasibility of warrant; and - utility of warrant.

June 10, 2010	RE: LEGAL PRECEDENT ON REASONS AND INABILITY TO JUDICIALLY REVIEW DECISIONS IF THE BASES FOR THE DECISION ARE WITHHELD <i>Vancouver International Airport Authority v. Public Service Alliance of Canada</i>, 2010 FCA 158 (see: BOA Tab 43, VIAA) ✚ Seminal case relating to withholding bases from members denies the ability to determine to judicially review.
June 2011	RE: LSBC RULE CHANGES – REQUIRED COOPERATION; FORCED PRODUCTION OF PRIVILEGED RECORDS; AND ENTER LAWYERS’ OFFICE DURING BUSINESS HOURS (see: LSBC notice of rule changes) ✚ The LSBC further amended certain rules. The rules governing complaints and investigations were updated to clarify that lawyers are required to cooperate with a Law Society investigation, answer questions, orally or in writing, as directed, and produce records, including those that are privileged or confidential, and to enable investigators to enter lawyers’ offices during business hours or by agreement. RE: SCC PRECEDENT REGARDING ABSENCE OF REASONS <i>Newfoundland and Labrador Nurses’ Union v. Newfoundland and Labrador (Treasury Board)</i>, 2011 SCC 62) (see: BOA Tab 54, Nurses’ Union) ✚ When there are no reasons where they are required, there is nothing to review
July 2011	RE: LSBC RULES CHANGES – PRIVACY INTERESTS RE SEIZURE OF RECORDS (see: LSBC notice of rule changes)
	✚ The process for claiming a privacy interest in material that is copied in the course of a discipline investigation is clarified (Rule 4-43(1) to (1.3) (see: BOA Tab 4)

2012-2013	Re: <i>LEGAL PROFESSION AMENDMENT ACT, 2012</i> ✚ <i>Legal Profession Amendment Act, 2012</i> were effective upon Royal Assent on May 14, 2012. The significant and deliberate amendments that widened the powers of the LSBC and further limited the <i>Charter</i> rights of members and persons. RE: LEGAL PRECEDENT REGARDING SEARCH AND SEIZURE OF TECHNOLOGICAL DEVICES <i>R. v. Vu</i>, 2013 SCC 60 (see: BOA Tab 24) ✚ The SCC Rules that Computers Require Distinctive Treatment under Section 8 of the <i>Charter</i>
March 25, 2014 May 23 and 27, 2014	MCLEAN AND LSBC CHRONOLOGY ✚ LSBC SEEKS TO SET ASIDE CONSENT ORDER: To Interim Suspend from the practice of law (ironically, it is Mr. McLean’s birthday when served with application) ✚ May 23, 2014: Mark Bussanich, as applicant and solicitor to the Discipline Committee, applies to the Chair of the Discipline Committee for an ASSO which would entitle the LSBC the power to enter the office and home of the member. This appears to be the commencement of the SSO Proceeding against Mr. McLean. ✚ May 27, 2014: Bussanich emailed Riddell that he was remised in failing to provide Riddell the Attachment to the Rule 4-43 Order. Riddell had already signed the ASSO (the “SSO”) before reviewing the Attachment. ✚ Riddell had signed as Chair of the Discipline Committee and as client of Mark Bussanich wherein he received the Privileged Legal Opinion rather he provided the Privileged Legal Opinion to Riddell that is appeared and a forensic copy should be authorized. Opinion To the Chair of the Discipline Committee” “PRIVILEGED AND CONFIDENTIAL” “During a still on-going compliance audit, because it appears he is not maintaining records...” “The Law Society is also requesting that the Order authorize a

	forensic copy of electronic records as they might contain: Email correspondence not contained in the paper files provided; and Other client file information and accounting information stored electronically. (the “PCA”)
June 2, 2014	 Alleged Assault, Battery and False Imprisonment: ○ Lawrence Dirk waited for Mr. McLean outside of LSBC after a citation hearing where LSBC failed to prove its case ○ Mr. McLean reported Dirk to LSBC for his conduct in relation to false imprisonment, assault and battery, and subsequent chasing him down Cambie street ○ Investigated by Caldwell without corresponding further with Mr. McLean

June 2-10, 2014	✚ On June 3, 2014, Mark Bussanich, David McCartney, Wendy Ho, and Andrea Chan were in regular contact via phone, text message, Blackberry messenger, and e-mail. McCartney began prying, without consent, into the personal affairs of the Plaintiff. ✚ On June 3, 2014, At 11:24 a.m., McCartney sent the following e-mail to Bussanich titled, “one important fact”: “I just spoke to the receptionist Laura Paulson. She advised that Mr. McLean came in with King she said to McLean ‘these people from the Law Society and they are here to see you.’ McLean walked past saying, ‘Well I do not want to see them.’” ✚ On June 3, 2014, at 2:29 p.m., David McCartney sent an email (only material excerpts included) to Bussanich regarding the Plaintiff’s agent who was sent on the Plaintiff’s instruction and authority: “Interestingly that he left so quickly this morning that he left his house and office keys” ✚ On June 3, 2014, At 3:58 p.m., McCartney sends another email to Bussanich relating to his inability to break into McLean’s computer with is titled, “Computer Codes and Passwords”:

	“According to both McLean’s practice supervisor and Office manager, they have no codes or passwords for any of McLean’s computers or electronic devices. McLean merely rents his offices and Paulson and Cop reception handles his mail. McLean’s computers are stand alone and he is not hooked into the Paulson and Co system. There is no lock on McLean’s door. DJM” ✚ June 3, 2014, the Plaintiff attempts to obtain his keys through authorized third party and Andrea Chan yells at the Petitioner’s assistant, “Nothing leaves this office” (“Constructive Seizure”). The search was undertaken and continued without the Petitioner present. ✚ On June 3, 2014 at 9:53 p.m., the Petitioner seeks the particulars and Reasons for the SSO. ✚ On June 4, 2014, the LSBC served the Petitioner with an internal complaint regarding his failure to comply with the SSO and did not reply to his question regarding the bases for the SSO. ✚ On June 10, 2014: The Petitioner seeks the particulars and reasons for the SSO. Mark Bussanich failed to respond to the request for particulars and Reasons in contravention of his professional obligations and obligations in the SSO Proceeding. Mark Bussanich’s failure to respond was intentional and wrongful. ✚ Mr. McLean continues seeks the Reasons and particulars for the ASSO. The LSBC continues to demand entry into his personal residence in downtown Vancouver and the Mr. McLean denies entry. He is cited for his alleged misconduct by the Chair of the Discipline Committee for failing to comply with the LSBC Search/Seizure proceeding.
July 2014	✚ Interim Suspension Hearing: LSBC hearing for interim suspension of Mr. McLean
August 2014	✚ Interim Suspension Hearing Dismissed: LSBC application to interim suspend Mr. McLean is dismissed. Based on research, Mr. McLean is the first ever to defeat an interim suspension hearing at first instance.
September 2014	✚ McLean cannot recover costs due to jurisdictional under LSBC Rules: Mr. McLean seeks costs for being put to the expense and embarrassment of such a proceeding but Law Society Rules are structured in such a way that Mr. McLean cannot recover costs.

December	Commencement of proceeding - S-1410056 (“Damages Action”)
2014	✚ McLean sues LSBC and various individual defendants for unlawful acts. ✚ Mr. McLean files Notice of Civil Claim in conspiracy against the LSBC and individual defendants

February 2015	RE: LSBC HEARING DECISION RE MCLEAN: FAILURE TO COOPERATE WITH SSO IS MORE GRAVE THAT CONVENTIONAL REGULATORY INVESTIGATIONS 2015 LSBC 06: McLean refuses to consent to entry into his home for forensic seizure – conduct found to be “grave” ✚ To date, Mr. McLean has not provided access to his home office computer, nor has he provided his working login and password information for his GoDaddy and DropBox accounts. He has also not provided his cell phone or cell phones or other mobile devices for imaging. ✚ In addition, with regard to factor (a), we note that, while cooperation with Law Society investigations in all respects is important, Mr. McLean’s conduct constitutes non-compliance with an order. Non-compliance with the orders of statutory bodies and courts is considered grave: Law Society of BC v. Welder, 2014 LSBC 58. Re: Legal Precedent for test for consent in administrative context ✚ Where the test mentions “police” or “police conduct,” the words “school authority” or “conduct of school authority” may be substituted (see: <i>Simon Gillies et al v. Toronto District School Board</i>, 2015 ONSC 1038) (see: BOA Tab 69, TDSB) ✚ Mactavish J. summarized those criteria as follows in <i>Canada (Minister of Citizenship and Immigration) v. Jaballah</i>, 2009 FC 33 (CanLII), 187 C.R.R. (2d) 103, at paragraph 76 (see: BOA Tab 68, Jaballah) (i) there was a consent, express or implied; (ii) the giver of the consent had the authority to give the consent in question; (iii) the consent was voluntary ... and was not the product of police oppression, coercion or other external conduct which negated the freedom to choose whether or not to allow the police to pursue the course of conduct requested; (iv) the giver of the consent was aware of the nature of

		the conduct to which he or she was being asked to consent; (v) the giver of the consent was aware of his or her right to refuse to permit the police to engage in the conduct requested; and, (vi) the giver of the consent was aware of the potential consequences of giving the consent. (<i>Wills</i> at para. 69)
March 2015	30,	RE: LSBC ADMISSIONS ABOUT ITS SEARCH AND SEIZURE PROCESS S-1410056 March 30, 2015, Certified Transcript, PR, Tab 2, Affidavit #1 of Petitioner, Exhibit “B”, page To the notion that the lawyer could examine, could authorize the production but couldn't copy is not a sensible reading of the statutory intent, in my respectful submission, that taking copies is simply an ordinary and natural part of an examination. In fact, the examining of books, records and accounts in this day and age, the alternative would be that what the statute is authorizing is that the investigators may go in, they may look, they may require him to show, but they may not actually take a photocopy. They may not actually make a record of what they're being shown. In my submission that is not a sensible reading of the statute. RE: MADAM JUSTICE GEROW PERFECTLY IDENTIFIES AND DELINEATES THE LEGAL ISSUE THE COURT: But I thought the issue here is whether or not they are entitled under this section 36 to make a rule which allows them to go in and search and seize documents on the site with -- I mean, this rule says that it's requiring a lawyer to cooperate with an investigation or examination on request. There's nothing in here which -- wait just a moment. MR. GOMERY: I understand.

	THE COURT: Which on a plain reading -- and if you're asking me to plainly read -- that allows a search and seizure of material in -- without consent or on request, presumably, and then you get your consent. But that's what the argument is, is that -- not that they -- I mean, if there was an investigation where they had permitted you to come in and permitted the investigation to go on, of course, you know, it makes sense that you could copy the documents in that context. What Mr. McLean is actually complaining of is that the rule that your client relied on, that took -- allowed them to go further than that. It allowed them to go in and search and seize without an order under section 37, and that's the issue, is whether or not that constitutionality of that rule is made out.
April 7, 2015	Re: Madam Justice Gerow Decision finding that the absence of evidentiary record for <i>Charter</i> challenge to Impugned Rules and whether Mr. McLean's <i>Charter</i> rights were breached.
April 13, 2015	RE: LSBC FILES AMENDED PLEADING On April 13, 2015, the LSBC made the following admissions in its filed Amended Response to Civil Claim (see: PR, Tab 4, Affidavit #1 of Petitioner, Exhibit "B", page 9). "Having regard to the information and concerns that led to the making of the Rule 4-43 order and consistently with the LSBC's standard practice in such case, Mr. Bussanich and the LSBC considered it important that the Plaintiff only become aware of the order upon the commencement of the investigation by the investigators taking possession of copies of the plaintiff's documents, to avoid any risk of tampering or alteration by the plaintiff." As pleaded by the LSBC, it subjectively feels that the "...the LSBC chose to conduct its investigation under the Law Society Rules through the Rule 4-43 order as a fair, effective, and economical alternative to a court application under s. 37 of the <i>Legal Profession Act</i> or otherwise."

May 28 and	Re: Madam Justice Gerow Hearing S-1410056

29, 2015

On May 29, 2015, the LSBC made the following admissions and submissions before The Honourable Madam **Justice** Gerow (see: **PR, Tab 4**, Affidavit #1, Exhibit “D”):

LSBC: Now, in my submission there's nothing here to express a **legislative intent** that records means anything less than records as defined in the Interpretation Act. And having regard to the purpose, the purpose is of course the investigation of books, records and accounts of a lawyer. It is necessary that the Law Society not be **stopped cold** in its investigation if the lawyer has decided to mix personal and business records on a hard drive, as lawyers do.

THE COURT: Well, **they wouldn't be stopped cold**. That's the point. They would make an application under section 37, which would allow them **if they had appropriate evidence** to then go in and --
...you can't say they would be stopped cold.

They would be not able to **seize** or to copy **the entirety of a hard drive** presumably if it was within the -- **if that didn't fall within the definition of records under section 36**, but that wouldn't preclude the Law Society from then saying well, we want the computer, the hard drive computer for this particular individual. **We need to make an application to court**. So that's -- section 37 allows that, so I don't understand that submission.

MR. GOMERY: It's -- **I think I overstated it**.

MR. GOMERY: Yes, you thought so. It would necessitate applications to court in any case in which the lawyer mixed personal and business records on a hard drive. It would -- the working group committee referred to the commonplace -- they wondered whether there were any lawyers who were not recording -- keeping their records largely electronically and mixing, but in any event the section 37 -- Simply my point is section 37 **isn't** creating -- **isn't evincing a clear intention** to cast a **broad net** than 36(b).

There was another important exchange where the LSBC provided its position on why the seizure of limitless records in a member's office or home is reasonable at page 40 of the transcript (see: **PR., Tab 4, Affidavit #1 of the Petitioner, Exhibit “D”, page 16**):

	Mr. Gomery: And there are two problems in my submission with this: the first is the premise that the Law Society's concern is based on a compliance audit conducted by Ms. Milz were limited to trust accounts. At paragraph 19 of the Law Society's response pleads very extensive concerns not at all limited to trust accounting, and of course this is not -- we're not at a point where we've got to evidence on this. The second point is that the Law Society did not, quote, "go after" Mr. McLean's personal records. The whole process is one that's designed to capture professional records, recognizing that personal records may be caught where they're mixed up with professional records, and of course it includes a process for independent oversight for the exclusion of records that contain personal information not relevant to the investigation. Mr. McLean has made some submissions which amount to a criticism of the independence of that -- of the independence of the oversight, a criticism of the process. In my submission those points do not go to the <i>vires</i> of the rule, where they go to is Charter challenge, to the reasonableness of the rule, and that is not a matter that is before -- with us today. I think just on that subject I should refer to one aspect of the working group report. MR. GOMERY: And then Mr. McLean read to you paragraphs 1, 2, 3 and 4, and I simply wish to draw to your attention point number 6. I won't read it, but here is the process contemplated pursuant to the rule 4-43 order. It's an extensive process. Mr. McLean said, <i>where is the protection for me?</i> The answer is here it is.
August 2015	Re: Madam Justice Gerow Decision 2015 BCSC 1431 ✚ LSBC admits consent is required to carry out search and seizure in office and home ✚ She finds that the power to grant a Rule 4-43 order pursuant to s. 36 is clear but whether it is constitutional is for another day ✚ Her Ladyship perfectly identifies the issue and finds that the LSBC does not have the power to suspend Mr. McLean for failing to comply with an SSO or enter his home

September 2015	Re: LSBC fail to attend discoveries ✚ Mark Bussanich, Eva Milz and Philip Riddell failed to attend two sets of
	discoveries for a total of six missed discoveries
October 2015	REL LSBC's Refusal to Return Seized Hard Drive ✚ The Petitioner had withdrawn any consent that was allegedly given and sought the return of the copies of the seized. October 7, 2015, Mr. Geoff Gomery wrote as follows in response to that request: You request 'the return of the documents that you seized you without my consent'. The Law Society is not in possession of the original documents obtained from you. It is in possession of copies. There is an issue in this litigation as to whether the Law Society obtained those copies with your consent. The copies are relevant to the action that you have commenced and to the ongoing regulatory proceedings to which you are a party. <i>Even if</i> those matters all come to an end, the copies remain relevant to any future attempt that you may make, as a disbarred lawyer, to apply for readmission to the Law Society. The Law Society is not going to return or destroy the copies while the action is underway. What will be done with them afterwards will depend at least in part on the outcome of the action.
November 2015	Re: MCLEAN APPLICATION TO STRIKE RESPONSE TO CIVIL CLAIM AND COURT COMPELS PRODUCTION UPON LSBC AND LSBC DEFENDANTS ✚ McLean brings application to strike the Response to Civil Claim for failure to list and produce one document and six missed discoveries. ✚ Mr. Justice Bowden orders documents and discoveries in the face of a striking application.
January 2016	COURT ORDERED DOCUMENT PRODUCTION AND COMPELLED DISCOVERY ATTENDANCE ✚ LSBC produces thousands of documents, <i>inter alia</i>, including the above noted documents and underlying materials regarding SSO (18 months after demand)

February 22, 2016	RE: XFD OF THE PHILIP RIDDELL, CHAIR OF DISCIPLINE COMMITTEE WHERE HE MADE THE FOLLOWING ADMISSIONS: Page 27 2 A The 4-43 materials in support of the application. 3 105 Q Okay. Now, when you say the 4-43 application,

4 you're referring to what Mark Bussanich has 5
provided you, correct?
6 A I'm referring to the **opinions** or the supporting
7 materials in the two binders. I believe I received
8 an electronic version on the Friday, the 23rd, and
9 a paper version on the 26th with all the
10 attachments. That's the bundle of materials I'm 11
referring to.

(the “**Admission: LSBC Application**”)

Page 30

18 129 Q Now, Mr. Riddell, just because I've
never seen it,
19 there are **no reasons** that supplement your
order
20 that you've listed or produced in
documents, 21 correct?

22 A **No.**

23 130 Q Was there a transcript of the
hearing that led to
24 this Rule 4-43 order?

25 A **No.**

(the “**Admission: No Reasons**”)

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1 131 Q It was all done via either e-mail or
delivery to

2 your office and/or e-mail, correct?

3 A It was done based upon the materials
delivered to

4 my office.

5 132 Q Via courier?

6 A Via courier and also via e-mail.

7 133 Q In arriving at the order, you didn't
attend the Law

8 Society and discuss in person with Mark
Bussanich, 9 correct?

10 A **I did not attend the Law Society.**

11 134 Q Okay. He did not attend your office?

12 A **He did not attend my office.**

13 135 Q You did not receive any affidavit
evidence in

14 support of this Rule 4-43 application,
correct?

15 A I received the materials I've described
before. 16 136 Q Okay. But there was no -- there
was no sworn

17 evidence, correct, I'll get you --

18 A I received those materials I described
before, and

19 **nothing was under oath.**

20 137 Q Okay. Nothing was under oath.
Thank you for that.

(the “**Admission: No**

Sworn Evidence”)

Page 43

1 189 Q And in that capacity, when he's
giving you a legal

2 opinion, it's legal advice, correct?

3 A In the capacity of being in the discipline
4 committee -- 5 190 Q M-hm?

6 A -- **I am taking legal advice**, as are all of the 7
members of the committee.

8 191 Q And in that capacity, he is the
solicitor and you

9 are the **client**, correct?

10 A I believe that's a
fair
characterization

(the “**Admission: Solicitor-Client Relationship**”)

8 268 Q Just so I have your evidence correct, after
9 receiving these documents, or this document, this
10 opinion, privileged and confidential, you don't 11
seek any clarification from Mark Bussanich before 12
signing the order, correct?

13 A I don't seek -- I don't have a communication with
14 Mr. Bussanich with regard to the contents of the
15 materials sent to me because it is my obligation
16 under 4-43 to determine, and the language used in
17 4-43, it is set out here, is if I reasonably

18 believe that a lawyer or former lawyer may
have
19 committed a **discipline violation**. That is the
test
20 I apply, reasonably believe, and that is the test
21 which was applied. If the materials do not
meet
22 that test, the order is not signed; if the
23 materials meet the test, the order is signed.
24 269 Q Have you ever received an application
for a
Rule
25 4-43 order that you've rejected? A I **don't**
believe that I have.

(the “**Admission:**
Discipline Proceeding”)

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1 367 Q -- correct? So you would agree with me that there
2 is a section under the *Legal Profession Act*,
3 Section 47, that allows a member to apply for a 4 review on
the record, correct? You're aware of 5 that section?
6 A Of a hearing panel decision, yes.
7 368 Q M-hm. But you're not a **hearing panel**?
8 A **No, I'm not. I believe I would be subject to the 9 Judicial**
Review Procedure Act, though.

(the “**Admission: JRPCA Applicable**”)

Page 78/79:

8 383 Q You, in your capacity as chair of the discipline
9 committee, do not direct in any way that the member
10 is given a copy of the underlying opinion of Mark 11
Bussanich that is privileged and confidential, 12 correct?
13 A **No.**
14 384 Q So the member doesn't receive the underlying
15 materials of Mark Bussanich in this case?
16 A **Not that I'm aware of.**
17 385 Q And not the documents of Ms. Eva Milz,
correct?

	18 A At what stage? 19 386 Q Prior to receiving the order. 20 A Oh. 21 387 Q Or contemporaneous with the order. 22 A No.

	23 388 Q So the member, when they are presented with your 24 order, only receive a copy of this order and the 25 attachment to the order, correct? 1 A I believe you showed us Ms. Crosbie's letter -- 2 389 Q Sure. 3 A -- that had some other things with it. 4 390 Q Sure. M-hm. Now, in your capacity as a decision 5 maker under the Administrative Tribunals Act, you 6 do not direct that any supporting documentation is 7 presented to the member prior to their receipt of 8 this order, correct? 9 A No. (the “Admission: No Underlying Materials”) Page 80 1 395 Q Fair enough. And you'd agree with me this is 2 done -- obviously you said <i>ex parte</i>? 3 A Yes. (the “Admission: <i>Ex parte</i>”) Note: this evidence was not part of the record before the British Columbia Court of Appeal

March __, 2016	Re: LSBC APPELLATE HEARING ✚ The LSBC brought forth an appeal to its loss on a variety of issues and made a variety of admissions about its interpretation of its powers based on the statutory scheme (see: PR , Tab 4, Affidavit #1 of Petitioner, Exhibit “F”): “A striking gap in the regulatory regime is revealed if a lawyer under investigation is able to limit the investigation of business and practice records simply by keeping them off-site. Having regard to the mandate...such a gap cannot have been intended by the Legislature. “What determines whether the investigator should be permitted to seize or demand records located at a lawyer’s residence is the purpose for which they were created. Determining whether records are properly subject
	to an investigation requires an inquiry into the circumstances surrounding the creation of the records. It does not depend on their location. “Put another way, there is nothing in the statutory scheme to suggest that the scope of the investigatory power under s. 36 varies according to the manner in which the investigation is conducted, so that applying under s. 37 makes possible an investigation that would otherwise not be permitted.”
July 11, 2016	Re: Vancouver Sun Petition Dismissed re <i>Charter</i> challenge (see: BOA Tab 7) <i>Re: Mulgrew v. The Law Society of British Columbia</i>, 2016 BCSC 1279 ✚ Vancouver Sun’s Petition is dismissed in relation to s. 26(4) of the <i>LPA</i> regarding the subpoena duces tecum

August 2016	Re: LAW SOCIETY APPEAL - Court of Appeal Decision - The Court of Appeal stated ambiguously at: “Further, I am not satisfied that the necessary factual underpinnings are before us to admit of a definitive answer to the administrative law challenges to the May 27, 2014 order and Rule 4-43. It seems to me that there may have been a failure by all parties to distinguish, in their submissions, the difference between a right to investigate, which includes the right to demand all documents or records related to the law practice wherever they be, and the right to enter and search particular premises. <i>If so</i>, that question must be dealt with in the right case brought in the procedurally correct manner. Accordingly, I would not endorse the reasons of the judge on the issue of the scope of the Law Society’s powers of investigation under Rule 4-43, and leave those questions to a different case” - Note: there was no failure to distinguish by Mr. McLean or the LSBC. The LSBC’s position on its ability to enter offices is entrenched in the LSBC Rules see <i>supra</i>. Further, the LSBC admitted its right to enter a home under Rule 4-43 as noted <i>supra</i>. Unfortunately for the parties and the public, such a contingent statement has delayed determinations of these undecided issues of public importance. - To the extent that is the issue, Mr. McLean has brought the various Petitions in the procedurally correct manner with respect to the LPA Petition, LSBC Rules Petition and JRPA Petition
November	Re: LSBC apparently investigating McLean for alleged fraud despite no
2016	longer practicing law - One Naim Abou-Khazaal, now turned LSBC informant, deposed that the LSBC had been appearing at a place of business of Mr. McLean and claiming that they were investigating him for fraud. - The investigator, David McCartney, who was investigating him for fraud was, in a twist of irony, the President of the Certified Fraud Examiners Association in British Columbia - Note: Mr. McLean has made a demand for records involving his name under the relevant privacy statutes. The LSBC refused.

January 2017	Re: LSBC counsel falsely report McLean to North Vancouver RCMP leading to a public arrest at place of business ✚ Leonard Doust, QC and Tom Doust, son of Leonard Doust, falsely and maliciously allege to the RCMP that the Mr. McLean had uttered death threats on a day in January 2017 in North Vancouver when Mr. McLean was not even present in said jurisdiction at said time.
February 2017	Re: Public arrest of McLean based on fictitious police report by LSBC ✚ On said date, Mr. McLean was arrested by a RCMP fleet of vehicles team outside his place of business while said RCMP was tracking him via a cell phone number associated with a business which he had an interest in. McLean pleads not guilty and released on bail. McLean obtains condition that he can contact Leonard Doust with respect to the appeal. ✚ It appears that the primary purpose of the false criminal allegation was so that McLean could not contact Leonard Doust and the appeal could not proceed forward.
March 2017	Re: Setting down of hearing and Doust “Taps Out” ✚ McLean sets down Court of Appeal hearing against LSBC in a regulatory matter and Leonard promptly quits as counsel for the LSBC (the “Tap Out”); and ✚ Prior to the Tap Out, Leonard Doust submitted on behalf of the LSBC as follows during that matter: “The Law Society has an absolute discretion to decide in what circumstances members should be cited for alleged misconduct.” ✚ This is clearly in conflict with Supreme Court of Canada authority and provides insight into why the LSBC felt so unlawfully emboldened to
	cite members for certain conduct.

June 2017	Re: LSBC summarized position (see: PR, Tab 2) ✚ “In brief, Mr. Bussanich delivered unsworn material to the Mr. Riddell, who reviewed and made the order without giving reasons. It was an <i>ex parte</i> application. Mr. Riddell applied the following test: did he <i>reasonably believe</i> that a lawyer or former lawyer <i>may have committed</i> a discipline violation. He did not direct that the materials he had reviewed be provided or contemporaneous with the order.” (see: PR , Tab 4, Affidavit #1 of the Petitioner, Exhibit “L”, page 54) ✚ Note: it is admitted that he or Bussanich did not direct the underlying materials be delivered to Mr. McLean in the face of the multitude of requests for said documents. That is the practice to not deliver the underlying materials to the member at any juncture during an ASSO. ✚ Note: by “unsworn material”, that is the PCA of Mark Bussanich, now quit the LSBC,
June 2017	Re: Mr. Justice Grauer Decision ✚ Mr. Justice Grauer renders decision and gives nine independent ways for Mr. McLean to quash the SSO noted supra
June 2017	Re: McLean files Petition under JRPA ✚ Mr. McLean files Petition under <i>JRPA</i> for, <i>inter alia</i>, quashing of SSO and return of seized hard drive records.
July 2017	Re: Criminal Charges not even approved despite seizure of cell phone and search thereafter ✚ Crown Counsel in North Vancouver refuses to even approve charges against Mr. McLean as there was no evidence to corroborate the fictitious charges launched by Tom Doust and Leonard Doust and somehow accepted by the North Vancouver RCMPC.
July 2017	Re: LSBC files Response to Petition; <i>Inconsistent Positions between Mulgrew and McLean</i> ✚ In <i>Mulgrew</i>, the LSBC admitted that a requirement to produce by a

	regulator is a seizure at law (see: BOA Tab 7, <i>Mulgrew</i>, para 23). ✚ However, the LSBC took a different position with this Petitioner from the outset and throughout (see; PR Tab 2, Exhibit “D”, page 19). ✚ Further, in a Response to Petition filed in July 2017, the LSBC then took a different legal position that it did in <i>Mulgrew</i> by so pleading at paragraphs 31 through 33 in S-175785. ✚ Mr. McLean has put the LSBC on notice of his seeking of special costs pursuant to Glover (see: BOA Tab 70)
August 2017	Re: McLean sets hearing for Petition and LSBC desperately counters with a Notice of Application for Security for Costs

September 2017	Re: Justice MacIntosh Decision regarding <i>vires</i> and documents ✚ Justice MacIntosh strangely ordered security for costs and an order that Mr. McLean pay outstanding costs before seeking an order for the return of the documents seized. It puts an interesting spin on access to justice when a member is required to pay to seek judicial review orders ✚ However, Mr. Justice MacIntosh made the following orders in the Petitioner's favor in September 2017: The Respondent will continue to hold the forensic copy of the Petitioner's hard drive but the Respondent cannot use the documents from that hard drive in any ongoing proceeding without the petitioner's permission or further order of the Court. If the Petitioner states in writing that all present or future claims against the Respondent are at an end and he will not apply for readmission, then the Respondent must destroy the forensic copy or return it to the Petitioner, at the petitioner's election. Note: the LSBC already used the documents from the hard drive without the petitioner's permission but with the consent of the Executive Director Full factual record: more importantly, Mr. McLean finally obtained the LSBC's position with respect to Rule 3-6(1) -(3) in that the benchers passed said rules pursuant to its, <i>inter alia</i> , statutory power under s. 11(b). The argument of Mr. McLean was that Rule 3-6(1) – (3) did not comply with the requirements
	under ss. 26.01. Mr. Justice MacIntosh agreed with Mr. McLean in this regard but ss. 11 is clear on its face.
December 2017	Re: Filing of <i>LPA Petition</i> with Notice of Constitutional Question S-1711419 ✚ At said time, there was a full factual record with respect to the LSBC's position for how it passed rules 3-5, 3-6 and 4-55
January 2018	✚ McLean files LSBC Rules Petition
January 2018	✚ AGBC Response to Petition under <i>LPA Petition</i>

January 2018	✚ LSBC files Response to Petition in LSBC Rules Petition
January 2018	✚ McLean set down hearing against AGBC for Feb 2 and LSBC for Feb 6
Feb 2, 2018	McLean ready to proceed with hearing of Petition against AGBC. Parties appear before Madam Justice Watchuk and she orders that it be two days via long chambers with exchange of submissions and to be heard in April Hearing set for April 4 and 5
March 6, 22, 28, 2018	✚ Parties exchange submissions
March 29, 2018	✚ McLean files Petition Record
April 4 and 5, 2018	✚ McLean in accident on day of hearing and postponed ✚ Justice Butler adjourns the hearing accordingly
April 2018	McLean provides medical documentation
May 2018	AGBC fails to set date
May 2018	Mr. McLean seeks AGBC's dates re ss. 36(a) of <i>LPA</i> due to urgency and AGBC fails to respond
May 2018	Petitioner delivers the finalized Consolidated Brief to the AGBC and invites consent therein to the obvious constitutional defects in the <i>LPA</i>

May 30, 2018	Petitioner delivers Consolidated Brief to LSBC Act and Rules Committee
May 31, 2018	LSBC Response
June 1, 2018	Jeff Hoskins of LSBC responds that they disagree with Mr. McLean and will not be responding
June 2018	Petitioner seeks public facts from LSBC regarding ASSO's pursuant to Rule 4-55 from 2009 to 2018 along with how many times a member of the Discipline Committee has sat on a hearing panel and review board
June 8, 2018	LSBC refuses to compile statistics for the Petitioner so Petitioner researches the topic
June 11, 2018	LSBC Committees fail to respond to the Petitioner's requests

June 11, 2018	Petitioner provides LSBC with 2018 to 2003 word document with composition of hearing panels, review boards et al and merely seeks composition of Discipline Committee since 2003 to 2018

PART II: STATEMENT OF ISSUES

(A) LPA CQA PETITION

General

53. The general issue is whether subsections 11(a-c), 36(a-d, and i), 37.1, 41(2), and 88(1.1 to 3) (collectively, the “**Impugned Provisions**” or “**Impugned Sections**”) of the *Legal Profession Act*, S.B.C. 1998, C. 9 (the “*LPA*”) are **inconsistent** with the Constitution of Canada, including but not limited to ss. 7, 8,9, and 10 of the *Canadian Charter of Rights and Freedoms* (the “*Charter*”), Part I of *The Constitution Act*, 1982 being Schedule B to the *Canada Act*, 1982, c. II and/or alternatively with *Charter* values.

54. The primary *Charter* issue is whether subsections 36(a), (b) and (d) 36(i), 37.1, 41(2) and s. 88(1.1) (1.2) of the *LPA* are inconsistent with s. 8 of the *Charter* as they (alone or together) limit the rights of the members or persons to free from unreasonable search **or** seizure in conferring the precise discretion upon the LSBC to **delegate authority** to the **LSBCDC** to adjudicating on administrative search and seizure authorizations of records and ‘other evidence’ of persons (which may be personal, irrelevant or ‘subject to a solicitor-client privilege’) upon the legal test of *reasonable belief* that a member may have

committed “any misconduct” by the member **absent** evidence under oath by the applicant LSBC.

55. The primary protected independent and unqualified members’ right issue is whether the subsections 36(a) and 41(2) contravene LSBC members’ rights to a fair hearing in that they would be inconsistent with s. 7 and 11(d) of the *Charter*. To the extent that said right is not entrenched in the *Charter*, then the issue is whether subsections 36(a) and 41(2) contravene subsection 2(e) of the *Canadian Bill of Rights*?

Section 8 of the *Charter*

56. The specific constitutional questions, but not limited to, with respect to s. 8 of the *Charter* are as follows:

- a. Does subsection 36 (a) of the *LPA* infringe the rights guaranteed by s. 8 of the *Canadian Charter of Rights and Freedoms* and the right to a fair hearing insofar as it authorizes and **empowers** the LSBC to **delegate** any and all **authority** and responsibility to the **Discipline Committee** under **Part 4** (Discipline)?
 - i. If so, is the infringement a reasonable limit prescribed by law that can be demonstrably justified in a free and democratic society under s. 1 of the *Canadian Charter of Rights and Freedoms*?
- b. Do subsections 36(b) and (d) of the *LPA* infringe the rights guaranteed by s. 8 of the *Canadian Charter of Rights and Freedoms* insofar as they authorize and **empower** the LSBC to enter into **private** property of the member for the purposes of search and/or seizures (making copies) of records and collecting “other evidence” on the basis of reasonable belief that a member may have committed “any misconduct”?
 - i. If so, is the infringement a reasonable limit prescribed by law that can be demonstrably justified in a free and democratic society under s. 1 of the *Canadian Charter of Rights and Freedoms*?

- c. Do subsections 36(c) and (d), read together, of the *LPA* infringe the rights guaranteed by s. 8 of the *Canadian Charter of Rights and Freedoms* insofar as it authorizes and **empowers** the LSBC to enter into **private** property of the lawyer for the purposes of search and seizures (making copies) of records and “other evidence”?
 - i. If so, is the infringement a reasonable limit prescribed by law that can be demonstrably justified in a free and democratic society under s. 1 of the *Canadian Charter of Rights and Freedoms*?
- d. Do subsections 36(b) and (d) of the *LPA* infringe the rights guaranteed by s. 8 of the *Canadian Charter of Rights and Freedoms* insofar as they authorize and **empowers** the LSBC to enter into **private** property of the lawyer for the purposes of search and seizures (making copies) of records and “other evidence” **absent** evidence under oath by the LSBC, in its applicant capacity, in seeking said search and seizure authorization from the **LSBC Discipline Committee**?
 - i. If so, is the infringement a reasonable limit prescribed by law that can be demonstrably justified in a free and democratic society under s. 1 of the *Canadian Charter of Rights and Freedoms*?
- e. Do subsections 36(b) and (d) of the *LPA* infringe the rights guaranteed by s. 8 of the *Canadian Charter of Rights and Freedoms* insofar as they authorize and **empower** the LSBC to enter into **private** property of the lawyer for the purposes of searches and seizures (making copies) of records and collection of “other evidence” which are not **only** strictly relevant to the reasonable belief of the administrative decision maker regarding alleged “misconduct” that a member *may* have committed?
 - i. If so, is the infringement a reasonable limit prescribed by law that can be demonstrably justified in a free and democratic society under s. 1 of the *Canadian Charter of Rights and Freedoms*?

- f. Do subsections 36 (i) (i) and s. 37.1 of the *LPA* infringe the rights guaranteed by s. 8 of the *Canadian Charter of Rights and Freedoms* insofar as they authorize and **empowers** (expressly or by necessary implication) the LSBC to enter private property to make copies that are unrelated or irrelevant to the search and seizure and/or personal or confidential, and/or “subject to a solicitor-client privilege”?
 - i. If so, is the infringement a reasonable limit prescribed by law that can be demonstrably justified in a free and democratic society under s. 1 of the *Canadian Charter of Rights and Freedoms*?

- g. Do subsections 88 (1.1) to (1.3) of the *LPA* and the phrase of “subject to a solicitor-client privilege” set out in s. 88 (1.1) to (1.3) in the *LPA*, infringe the rights guaranteed by s. 8 of the *Canadian Charter of Rights and Freedoms* insofar as they require production of records, which are confidential and/or subject to a solicitor-client privilege, insofar as they apply:
 - i. apply to a “lawyer”;
 - ii. apply to a “member”;
 - iii. apply to a “client” of a lawyer; and/or
 - iv. apply to a “person”.
 1. If so, are these infringements a reasonable limit prescribed by law that can be demonstrably justified in a free and democratic society under s. 1 of the *Canadian Charter of Rights and Freedoms*?

Section 7 of the *Charter*

57. The constitutional questions with respect to s. 7 of the *Charter* are as follows:

- a. Do subsections 11 (1 – 3) of the *LPA* infringe the rights guaranteed by s.7 of the *Canadian Charter of Rights and Freedoms* on the following disjunctive grounds:
 - v. vagueness;
 - vi. arbitrariness;
 - vii. overbreadth; and/or

viii. grossly disproportionality.

1. If so, is the infringement a reasonable limit prescribed by law that can be demonstrably justified in a free and democratic society under s. 1 of the *Canadian Charter of Rights and Freedoms*?

Section 9 of the *Charter*

58. The constitutional questions with respect to s. 9 of the *Charter* are as follows:

- a. Do the **Impugned Sections** infringe the rights of lawyers guaranteed by s.9 of the *Canadian Charter of Rights and Freedoms* insofar as they obligate the lawyer not to leave the **private** property where such a search and seizure is being conducted until the LSBC has ceased said search and seizure?
 - ix. If so, is the infringement a reasonable limit prescribed by law that can be demonstrably justified in a free and democratic society under s. 1 of the *Canadian Charter of Rights and Freedoms*?

(B) LSBC RULES CQA PETITION

General

59. The general issue is whether **Impugned Rules** are **inconsistent** with the Constitution of Canada, including but not limited to ss. 7, 8, 9, and 10 of the *Canadian Charter of Rights and Freedoms* (the "*Charter*"), Part I of *The Constitution Act, 1982* being Schedule B to the *Canada Act, 1982*, c. II and/or alternatively with *Charter* values.
60. The primary issue is whether the **Impugned Rules** are inconsistent with s. 8 of the *Charter* in entitling the LSBC **COD** to grant **ASSOS** which are granted *ex parte* upon reasonable belief after receiving application materials from the LSBC that the member may have committed a "discipline violation" with the member being required to immediately consent to **ASSOS** (seizure of privileged and irrelevant records) **absent** any notice under the penalty of an immediate and indefinite suspension from the practice of law.

- i. If so, is the infringement a reasonable limit prescribed by law that can be demonstrably justified in a free and democratic society under s. 1 of the *Canadian Charter of Rights and Freedoms*?

Section 8 of the *Charter*

61. The constitutional questions with respect to s. 8 of the *Charter* are as follows:

- a. Are the **Impugned Rules** inconsistent with the *Charter* in that they authorize the Chair of the **Discipline Committee** to hear and decide the application for ASSO and grant search and seizure authorizations?
 - i. If so, is the infringement a reasonable limit prescribed by law that can be demonstrably justified in a free and democratic society under s. 1 of the *Canadian Charter of Rights and Freedoms*?
- b. Are the **Impugned Rules** inconsistent with the *Charter* in that the Chair of the **Discipline Committee** can authorize search and seizures of offices and homes of members **absent** evidence under oath?
 - i. If so, is the infringement a reasonable limit prescribed by law that can be demonstrably justified in a free and democratic society under s. 1 of the *Canadian Charter of Rights and Freedoms*?
- c. Are the **Impugned Rules** inconsistent with the *Charter* in that the Chair of the **Discipline Committee** can authorize search and seizures of offices and homes of members on the basis of reasonable belief that the member may have committed a “discipline violation”?
 - i. If so, is the infringement a reasonable limit prescribed by law that can be demonstrably justified in a free and democratic society under s. 1 of the *Canadian Charter of Rights and Freedoms*?
- d. Are the **Impugned Rules** inconsistent with the *Charter* to the extent that they authorize a single person Chair (as opposed to a panel) to grant administrative

search and seizure authorizations upon members and/or **absent** any written reasons for said decision by the Chair and/or entitling the LSBC to withhold the bases said decision from the member, it is inconsistent with s. 8 of the *Charter*?

- i. If so, is the infringement a reasonable limit prescribed by law that can be demonstrably justified in a free and democratic society under s. 1 of the *Canadian Charter of Rights and Freedoms*?
- e. Do the **Impugned Rules** infringe the rights guaranteed by s. 8 of the *Canadian Charter of Rights and Freedoms* insofar as they require production of records that are “privileged “insofar as they apply:
- i. apply to a “lawyer” or “member”;
 - ii. apply to a “client” of a “lawyer” or “member”; and/or
 - iii. apply to a “person”.
1. If so, are these infringements a reasonable limit prescribed by law that can be demonstrably justified in a free and democratic society under s. 1 of the *Canadian Charter of Rights and Freedoms*?
- f. Does Rule 3-6(2) violate s. 8 of the *Charter* in that **Discipline Committee** is adjudicating, in its discretion, whether the suspended member, who has failed or refused to comply with the underlying **ASSO** it granted, has showed “special circumstances” to stop or halt the suspension?
1. If so, are these infringements a reasonable limit prescribed by law that can be demonstrably justified in a free and democratic society under s. 1 of the *Canadian Charter of Rights and Freedoms*?

Section 7 of the *Charter*

62. The constitutional questions with respect to s. 7 of the *Charter* are as follows:

- a. Does Rule 3-6(1) violate s. 7 of the *Charter* in that the member **is suspended** indefinitely for ‘failing’ or ‘refusing’ (whatever that connotes) to comply with an **ASSO**, which is not in accordance with the principles of fundamental **justice**,

because the suspension flows from proof merely that the **ASSO** was granted, rather than the validity of such an order and/or the bases upon which it was made?

- i. If so, are these infringements a reasonable limit prescribed by law that can be demonstrably justified in a free and democratic society under s. 1 of the *Canadian Charter of Rights and Freedoms*?
- b. Does Rule 3-6(1) violate s. 7 of the *Charter* in that the member **is suspended** indefinitely for failing to comply with an **ASSO**, which is not in accordance with the principles of fundamental **justice**, because the member **is suspended** irrespective of the triviality of such non-compliance and/or the justificatory reasons for failure or refusal to fully comply?
 - i. If so, are these infringements a reasonable limit prescribed by law that can be demonstrably justified in a free and democratic society under s. 1 of the *Canadian Charter of Rights and Freedoms*?
- c. Does Rule 3-6(2) violate s. 7 of the *Charter* in that the member **is suspended** indefinitely for failure or refusal to comply with **ASSO**, which is not in accordance with the principles of fundamental **justice** because the member **is suspended** has complied to the subjective satisfaction of the Executive Director?
 - i. If so, are these infringements a reasonable limit prescribed by law that can be demonstrably justified in a free and democratic society under s. 1 of the *Canadian Charter of Rights and Freedoms*?
- d. Does Rule 3-6(2) violate s. 7 of the *Charter* that the member **is suspended** indefinitely for failure or refusal to comply with **ASSO**, which is not in accordance with the principles of fundamental **justice**, as the member may **only** delay or halt the suspension order upon showing “special circumstances”?
 - i. If so, are these infringements a reasonable limit prescribed by law that can be demonstrably justified in a free and democratic society under s. 1 of the *Canadian Charter of Rights and Freedoms*?

Section 9 of the *Charter*

63. The constitutional questions with respect to s. 9 of the *Charter* are as follows:

- a. Do the **Impugned Rules** and the admitted procedure under the same violate s. 9 in that the member is required to cooperate with ASSO such that he or she is not free from arbitrary detention or imprisonment until the LSBC has subjectively determined that the search and seizure has been completed?
- iv. If so, is the infringement a reasonable limit prescribed by law that can be demonstrably justified in a free and democratic society under s. 1 of the *Canadian Charter of Rights and Freedoms*?

Section 10 of the *Charter*

64. The constitutional questions with respect to s. 10 of the *Charter* are as follows:

- a. Do the **Impugned Rules** and the admitted procedure violate s. 10 of the *Charter* in that the member is not able to retain and instruct counsel without delay as the member is required to immediately cooperate with the seizure and forensic seizure in one's office and/or home with any chance to dispute the ASSO coming after the seizure or forensic seizure?
- v. If so, is the infringement a reasonable limit prescribed by law that can be demonstrably justified in a free and democratic society under s. 1 of the *Canadian Charter of Rights and Freedoms*?

(C) *JRPA* PETITION RE THE SSO AND SSO PROCEEDING

General Issue

65. The general issue is whether the **SSO must** be quashed, voided or set aside by way of an order of certiorari. *If it is set aside, then what consequential relief flows in favor of the Petitioner?*

Specific Issues

66. The statement of specific issues are as follows:

a. STANDARD OF REVIEW: ISSUES OF NATURAL JUSTICE, PROCEDURAL FAIRNESS, JURISDICTION, VIRES AND CONSTITUTIONALITY

- i. *Legal issue: what is the standard of review for the above five sub issues?*

b. CLASSIFICATION OF DISCIPLINE PROCEEDINGS

- i. *Legal Issue: how are discipline proceedings classified which involve regulatory bodies against professionals?*
- ii. *Mixed fact and law issue: what is the classification of the proceedings by LSBC against members under Part 4 Discipline?*

c. APPLICANT'S DUTY IN EX PARTE PROCEEDINGS AND HEARING

- i. *Legal Issue: what is the onerous duty upon an applicant in an ex parte discipline proceeding and hearing?*
- ii. *Mixed fact and law issue: Did the applicant, Mark Bussanich, employee lawyer at the LSBC, fail to discharge his onerous duty to make full, frank disclosure and present both sides of the argument for his employer and Mr. McLean during this adjudicative process of him serving his application on his client, ADM?*

d. EX PARTE HEARINGS

- i. *Legal Issue: when is a regulatory body allowed to conduct an ex parte hearing?*
- ii. *Mixed Fact and Law Issue: was the Respondent able to have this hearing conducted ex parte without a clear grant do so?*
1. *If the LSBC was able to conduct the hearing ex parte, then how does that affect their obligations in other areas infra?*

e. REQUISITE NOTICE TO MEMBER

- i. **Legal Issue:** *what type of **notice** is required to a member of a professional body in the circumstances of an administrative search and seizure proceeding (the “ASSO Proceeding”)?*
- ii. **Factual issue:** *what amount of notice does the LSBC give to the member about the commencement of the proceeding and execution of the ASSO?*
- iii. **Mixed Fact and Law Issue:** *was the Petitioner entitled to notice of the hearing of this application, the granting of the SSO, the execution of the SSO that had so much at stake for him in relation to his Charter rights, dignity and livelihood?*

f. ORAL HEARING REQUIREMENT

- i. **Legal Issue:** *is an oral hearing required for the hearing of an application of an ASSO?*
- ii. **Mixed Facts and Law Issue:** *was an oral required (transcribed) in relation to the application and granting of the SSO?*

g. EVIDENCE UNDER OATH REQUIREMENT

- i. **Legal Issue:** *is the applicant required to swear or affirm under oath evidence when seeking an ASSO that entitles entry into the office and home of a member for the purposes of a forensic seizure under the penalty of, inter alia, immediate and indefinite suspension from the practice of law?*
- ii. **Factual issue:** *whether the applicant LSBC swore evidence under oath in relation to Mr. McLean?*
- iii. **Mixed fact and law issues:** *was the applicant LSBC required to swear evidence under oath to obtain an ASSO that bestowed **authority** upon LSBC investigators to force their way, at any time suitable to them and without warning, into the business premises or home of Mr. McLean and search for and seize records by way of forensic seizure?*

h. LSBC’S DISCLOSURE OBLIGATIONS

- i. **Legal issue:** *what is a regulatory body’s disclosure obligations at the commencement, execution and post-execution stages of a regulatory search and seizure proceeding? Does that vary when a member has made a request for the same?*

- ii. **Mixed Facts and Law issue:** *Was the LSBC required to provide the Petitioner with the underlying materials before or at the time of the execution of the SSO? If not, was it required to provide copies of the materials after the Petitioner made a request for the same?*

i. LEGAL CLASSIFICATION OF DRACONIAN ORDER GRANTED BY ADM

- i. **Legal issue:** *how are orders, which entitle a regulatory body the right to enter onto **private** property for the purposes of forensic seizure of records (privileged or irrelevant) under the penalty, inter alia, of immediate and indefinite suspension from the practice of law?*
- ii. **Mixed Fact and Law Issue:** *what is the classification of the SSO granted by the ADM?*

j. STANDARD OF REVIEW (2) WHEN NO REASONS (FORMAL OR INFORMAL; WRITTEN OR ORAL) ARE ISSUED

- i. **Legal issue:** *is **deference** owed to an administrative decision maker when the administrative decision maker has failed to issue any reasons (formal or informal; written or oral) for an order that entitles immediate limitless seizure of a member's CPU and cell phone (irrelevant or privileged records) along with entry into a personal residence for the purposes of seizure under the penalty of immediate indefinite suspension from practice of law and loss of livelihood?*
- ii. **Mixed Fact and Law Issue:** *is **deference** to the SSO granted by the ADM when he has failed to issue any reasons (formal or informal; written or oral) the SSO that entitles immediate limitless seizure of a member's CPU and personal cell phone (irrelevant or privileged records) along with entry into a personal residence for the purposes of seizure under the penalty of immediate indefinite suspension from practice of law and loss of livelihood?*

k. TRIBUNALS' REQUIREMENT TO ISSUE REASONS FOR DECISIONS

- i. **Legal issue:** *what is required of administrative tribunals with respect to issuing reasons for their decisions?*
- ii. **Mixed Fact and Law Issue:** *was it incorrect for the ADM not to issue Reasons (written or oral; informal or formal) in relation to his adjudicative*

*function in granting the SSO based on a privileged application from his solicitor that entitled the LSBC to intrude into Petitioner's **private** office and principal residence and forensically copy all records from computers and personal mobile devices under multiple threats including, but not limited to, an immediate and indefinite suspension coupled with the ADM not directing the member to receive the application and information upon which the SSO was granted?*

I. LEGAL EFFECT OF ADM FAILING OR NEGLECTING TO ISSUE ANY REASONS

- i. **Legal issue:** *what is the legal effect of administrative decision maker(s) failing or neglecting to issue Reasons for their decisions?*
- ii. **Mixed Fact and Law issue:** *what is the effect of the ADM's failure to issue any form of reasons for the SSO?*

m. STANDARD OF REVIEW (3): CONFLICT OF INTERESTS (BIAS, REASONABLE APPREHENSION OF BIAS, PRINCIPLE OF DICTATION AND DEPENDENCE)

- i. **Legal issue:** *What is the standard for review when dealing with issues of bias, reasonable apprehension, conflicts of interest and independence?*

n. REASONABLE APPREHENSION OF BIAS

- i. **Legal issue:** *whether a reasonably informed person **could** reasonably perceive bias on behalf of an adjudicator when the decision maker has been a member of the regulatory body's **Discipline Committee**?*
- ii. **Mixed fact and law issue:** *whether a reasonably informed member **could** reasonably perceive bias on the adjudicator when this arbiter admitted under oath and court ordered produced documents that there was a mutually beneficial and confidential solicitor-client relationship at all relevant times between he and the applicant and/or the application itself was "Privileged and Confidential"?*

o. INDEPENDENCE

- i. **Legal issue:** *what is the legal test to determine whether the arbiter is entirely independent?*

- ii. ***Factual issue:*** what was the admitted relationship between Mark Bussanich and Phillip Riddell?
- iii. ***Mixed fact and law issue:*** did the ADM lose his independence as a result of being in a solicitor-client relationship with the applicant, Mark Bussanich, and the very application seeking the granting of the SSO was “PRIVILEGED AND CONFIDENTIAL”?

p. CONSENT

- i. ***Legal issue:*** what is the legal test for consent in the regulatory context involving a search and seizure of a member or former member in the members' ***private*** property? Further, can a third party waive another adult person's Charter rights for a search and seizure?
- ii. ***Mixed fact and law issues:***
 - 1. Did the LSBC enter Mr. McLean's private office absent his voluntary and informed consent on June 3, 2014?
 - 2. Did Mr. McLean provide voluntary and informed consent to the SSO to his private office on June 4, 2014?
 - 3. What is the effect of Mr. McLean refusing to consent to the LSBC's power to enter his principal residence under the SSO?

q. VIOLATION OF CHARTER RIGHTS

- i. ***Legal issue:*** what encompasses a member's Charter rights in the administrative search and seizure proceedings?
- ii. ***Mixed fact and law issue:*** were Mr. McLean's Charter rights violated at any stage of the SSO Proceeding?

(D) DAMAGES ACTION (S-1410056)

67. The issue of damages can **only** be defined after the determination of the above matters on liability and there is a jury trial notice for the same.

(E) MALICIOUS PROSECUTION ACTION

68. It would be speculative to determine but the legal test for malicious prosecution is as follows:

- a. The proceedings **must** have been initiated by the defendant;
- b. The proceedings **must** have terminated in favor of the plaintiff;
- c. The plaintiff **must** show that the proceedings were instituted without reasonable cause; and
- d. The defendant was actuated by malice.

69. The case law is replete with **authority** that the absence of reasonable and probable grounds is evidence of malice. The issue is whether the absence of evidence of reasonable and probable grounds by the LSBC is evidence of malice by the LSBC.

(f) COSTS

70. The issue is whether the below conduct amounts to special costs for some or all of the **McLean Proceedings** involving the LSBC:

- a. the failure to respond to Mr. McLean's requests for the underlying documents for the **SSO** for 18 months;
- b. inconsistent pleadings between cases of *Mulgrew* and the **McLean Proceedings**;
- c. perjury in affidavit material by the LSBC **COD** and the LSBC as applicant for the **SSO**;
- d. the conduct giving rise to the **McLean Proceedings** is a ground for special costs and punitive damages;
- e. failure of employee lawyers of the LSBC to discharge their professional obligations and follow LSBC Rules; and
- f. failure of counsel to discharge their professional obligations in relation to document production; and
- g. use of seized documents in the **McLean Proceedings** without the consent of Mr. McLean which was then prohibited by court order.

71. It is premature to determine issues of costs involving the AGBC which will be dependent upon its response to the Petitioner's invitation in this Consolidated Brief.

PART III: ARGUMENT

(A) CONSTITUTIONAL ANALYSIS FRAMEWORK

72. The Constitution of Canada is the **supreme law** of Canada, and **any law** that is inconsistent with the provisions of the Constitution is, **to the extent of the inconsistency**, of no force or effect (see: **BOA, Tab 1**, *Constitution Act*, 1982).

73. The issue in the Impugned Sections is what is the extent of each consistency and the consequential remedies?

a. *Charter Rights*

74. The *Charter* **guarantees** certain rights to everyone and persons.

Rights and freedoms in Canada

1. The *Canadian Charter of Rights and Freedoms* **guarantees** the rights and freedoms set out in it subject **only** to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

75. Everyone is guaranteed the following rights in Canada:

Life, liberty and security of person

7. Everyone has the right to **life, liberty and security** of the person and the **right not to be deprived** thereof except in accordance with the principles of fundamental **justice**.

Search or seizure

8. Everyone has the right to be secure against **unreasonable search or seizure**.

Detention or imprisonment

9. Everyone has the right not to be **arbitrarily** detained **or** imprisoned.

Arrest or detention

10. Everyone has the right on **arrest** or detention

- (a) to be informed promptly of the reasons therefor;
- (b) to retain and instruct counsel **without delay** and to be informed of that right; and

- (c) to have the validity of the detention determined by way of *habeas corpus* and to be released if the detention is not lawful.

b. British Columbia Interpretation Act

76. The B.C. *Interpretation Act* defines the following terms under s. 29 therein:

"affidavit" or **"oath"** includes an affirmation, a statutory declaration, or a solemn declaration made under the *Evidence Act*, or under the *Canada Evidence Act*; and the word "swear" includes solemnly declare or affirm

"justice" means a *justice of the peace* and includes a judge of the Provincial Court;

"may" is to be construed as permissive and **empowering**;

"must" is to be construed as **imperative**;

"obligation" includes a **duty** and a **liability**;

"person" includes a corporation, partnership or party, and the personal or other legal representatives of a person to whom the context can apply according to law;

"record" includes books, documents, maps, drawings, photographs, letters, vouchers, papers and any other thing on which information is recorded or stored by any means whether graphic, electronic, mechanical or otherwise;

"right" includes a **power**, **authority**, privilege and licence;

"shall" is to be construed as imperative;

77. As the Supreme Court of Canada said in *Re Manitoba Language Rights*, 1985 CanLII 33 (SCC), [1985] 1 S.C.R. 721, at p. 737, the presumption that the word "shall" is intended to be **mandatory** should be followed unless, "such an interpretation of the word "shall" would be utterly inconsistent with the context in which it has been used and would render the sections irrational or meaningless".

78. The glaring issue is what has our Provincial Legislature **empowered** the LSBC to do and compelled members and persons to do with respect to the **Impugned Sections**.

c. Civil, Quasi-criminal or Criminal Proceedings

79. Discipline proceedings are **quasi-criminal** due to their consequences upon a member (see: **BOA, Tab 9, Dr. Henderson**).

80. The search and seizure proceeding under s. 36 of the *LPA* is under the Part 4 which is titled “Discipline” (see: *LPA*, Part 4). The LSBC defends the actions of the tribunal member, the then Chair of the **Discipline Committee** in Philip Riddell (who was personally sued in Action S-1410056), in granting said **SSO** under s. 56 of the *BC Administrative Tribunals Act* (see: *ATA*, s. 56 (2)) (the “**Qualified Immunity Provision**”).

81. In order to have a Petition for judicial review under the *JRPA*, there has to be a **proceeding** (see: *JRPA*, s. 1(1)). Since His Lordship Grauer found that there was to be a judicial review of the SSO, it is a review of said proceeding from its commencement to completion.

82. Ergo, the LSBC’s authorization of a search and seizure under subsection 36(b) is an **order** by an administrative decision maker in a discipline proceeding. Moreover, it involves an intrusion into one’s Charter rights under the penalty of violating the law for non-compliance which makes it all the more **quasi-criminal**. Hunter is test when measuring legislation against the Charter in the **quasi-criminal** context.

83. The Rules of Professional Conduct state under:

Rule 7.1-1 states

A lawyer **must**

- (a) reply promptly and completely to any communication from the Society;
- (b) provide documents as required to the Law Society;

- (c) not improperly obstruct or delay Law Society investigations, audits and inquiries;
- (d) cooperate with Law Society investigations, audits and inquiries involving the lawyer or a member of the lawyer's firm;
- (e) **comply with orders made under the *Legal Profession Act* or Law Society Rules**; and
- (f) otherwise comply with the Law Society's regulation of the lawyer's practice.

84. The distinction between failure to cooperate with investigation and an order was outlined in *Law Society v. McLean*, 2015 LSBC 06, noted *supra*.

d. Search Warrants vs. Administrative Orders

85. **Warrant**: a judicial order directing a peace officer to do something such as arrest someone, search or seize something, or enforce a judicial order (see: <https://www.attorneygeneral.jus.gov.on.ca/english/glossary/?id=469#results>)

86. In *Attorney General of Nova Scotia et al. v. MacIntyre*, 1982 CanLII 14 (SCC) the Supreme Court defined a search warrant as follows [at page 179]:

... an order issued by a **Justice** under **statutory powers**, authorizing a named person to enter a specified place to search for and seize specified property which will afford evidence of the actual or intended commission of a crime.

87. It is trite that **only** a **justice** can issue a **warrant** and the Law Society of British Columbia **Discipline Committee** or a member thereunder is not a **justice** (see: *IA*, s. 29).

88. Administrative authorizations or internal statutory orders are different than judicial warrants (see: **BOA Tab 30**, *Lemare*). In that case, The Honourable Mr. **Justice** Grauer distinguished between the administrative search and seizure orders and warrants of search and seizure. He correctly and eloquently explained the differences between the two (see: **BOA Tab 30**, para 42) wherein he stated, “Having dealt with the **warrant** of search and seizure and the detention order, I turn to consider the pre-existing administrative seizure order carried out on February 20, 2009.”

e. SECTION 7 OF THE *CHARTER*

i. Liberty

89. There are few values more important to the individual in a free society such as Canada than the right not to be unlawfully arrested and detained. It is trite that the arrest occurs *at the time* a person is placed under arrest. In the area of torts, the tort of **false arrest** is **subsumed** in the tort of false imprisonment. It is made out when one is prevented from going where one has a lawful right to be where there was **no reasonable alternative**. For context, the member has no reasonable alternative if she is faced with consent or be immediately and indefinitely suspended from the practice of law. This is particularly apposite when there are no **guarantees** of return after said suspension.

90. False imprisonment can occur with physical force, threat of force or psychological coercion. The apparent **authority** to detain and request that another person remain to answer questions, it is reasonable to assume that an ordinary person would feel compelled to comply and remain. This is particularly apposite in the professional discipline context when a member is so required by such a legislative promulgation.

91. In regards to *imprisonment*, the Alberta Court of Queen's Bench wrote, in *Chopra v. T. Eaton Co. Ltd.*, 1999 ABQB 201, at ¶94:

"Imprisonment is defined as the detention of a person contrary to his will, the restraint of a person's personal liberty, coercion exercised upon a person to prevent the free exercise of his powers of locomotion. It may take place

without the actual application of any physical agencies of restraint, such as locks or bars, as by verbal compulsion and the display of available force. Every confinement of the person is an imprisonment, whether it be in a prison, in a **private** home, or even by forcibly detaining one in the public streets, any unlawful exercise or show of force by which a person is compelled to remain where he does not wish to be."

ii. Vagueness

92. It is a principle of fundamental **justice** that **vague** laws are **invalid**. This principle is called the "*void for vagueness*" doctrine. First, the [vague] law does not provide fair notice to persons of what is prohibited, which makes it difficult for them to comply with the law. Secondly, the law does not provide **clear standards** for those entrusted with enforcement, which may lead to arbitrary enforcement.

iii. Arbitrariness

93. A law is **arbitrary** when it limits section 7 rights in a way that bears no connection to its objective.

iv. Overbreadth

94. A law is **overbroad** when some, but not all, of the limits it places on section 7 rights bear no connection to its objective. Fundamental **justice** requires laws to impair fundamental rights **only as far as** necessary to achieve specific objectives set by the legislature passing them. Laws that go too far in the means they employ in implementing a legislative objective are considered overbroad, or unnecessarily "**sweeping**" in scope and therefore **invalid**.

v. Grossly Disproportionate

95. A law is **grossly disproportionate** in cases where the law's impact on section 7 rights is so serious as to be totally out of sync with its objective.

96. Although there is significant overlap between these four principles, and one law may properly be characterized by more than one of them, arbitrariness, overbreadth, and gross disproportionality remain three distinct principles.

vi. Section 26.01 versus S. 11 of the LPA

97. Section 26.01 of the *LPA* was passed in 2012 and it established the following **conjunctive mandatory requirements** for a member to be suspended during an investigation:

- a. **quorum requirement: only** 3 or more benchers may suspend a member during an investigation;
- b. **legal test:** before a member **is suspended** three or more benchers **must** be satisfied it is **necessary to protect the public**;
- c. **proceeding requirement:** provide for a proceeding before three or more benchers to take place **before a member is suspended**;
- d. **suspension term requirement:** three or more benchers **must set a term of a suspension** after being satisfied at the proceeding that is necessary to protect the public;
- e. **right of review requirement: must** provide for review of an order where member **is suspended**; and
- f. **one of three orders made on review:** the three or more benchers seized of reviewing the suspension order **must make** one of three orders: confirmation, variation or rescission.

vii. Right to practice law – no “standardless sweeps” (*Pierce v. LSBC*)

98. On the question of whether the issue of vagueness arises in the case of professional discipline where criminal consequences such as imprisonment are **impossible**, Clancy J. said (at 15) in *Pierce* (see: **BOA, Tab 11** at page 15):

Serious consequences flow from an **adverse finding** of a panel. Vagueness of language to a degree that permits a “**standardless sweep**” is contrary to principles of fundamental **justice, whether or not** the statute deprives a lawyer of his physical liberty. Where, as here, the right allegedly infringed is the right to practise a profession, **fundamental justice militates against a lack of standards** against which a member of that profession may measure his conduct.

f. SECTION 8 OF THE CHARTER

i. Disjunctive and Simpliciter(Canada different than the U.S.)

99. Legislation that authorizes a search **or** seizure can violate s. 8. Ergo, a search *simpliciter* or a seizure *simpliciter* can violate s.8 (see: **BOA, Tab 12, Dymnt**).

ii. Searches and Seizures at Law

100. It is well settled that a demand by a **person** for production of records is a seizure (see: BOA Tab 15, *Chambre*).

101. The BC *Interpretation Act* (see: **BOA Tab 3**) provides the following clarification:

Ancillary Powers

27(7) *If* in an enactment power is given to a person to inspect or to **require the production** of records, the power **includes the power to make copies** or *extracts* of the **records**.

102. The LSBC has all the powers and capacity of a natural person (see: *LPA*, s. 2(2)).

103. Photocopying of a record is a **search** (see: *R. v. Law*, 2002 SCC 10).

104. Whether the public **authority** "takes" the documents or compels the person to hand them over or demands entry into the **private** property, the impact on the person's right to privacy is the **same** (see: sections 17(1) and (4) of the *Combines Investigation Act*, therefore, constitute a seizure within the meaning of s. 8 and see: **BOA, Tab 14, Thomson Newspapers Ltd. v. Canada**, 1990 CanLII 135 (SCC)). The **demand** upon a professional for production of records for the **purpose** of **copying them** constituted a **search and a seizure notwithstanding** the refusal of the member to comply with such compulsions and obligations (see: *Bishop*, 1985 CanLII 569 (B.C.S.C.) at para 29; upheld at BCCA, 1986 CanLII 989). The authorities hold that the impact upon the privacy is the same.

105. This is consistent with the law in *Ontario Realty Corp. v. P. Gabriele & Sons Ltd.*, 2000 CanLII 22697:

There is no authority granted by an Anton Piller order to demand entry to any location (be it a home or a place of business) with the right and authority to force entry if that demand is not acceded to. Rather, an Anton Piller order allows a request for entry and that request may be denied, but the denier faces contempt proceedings for failure to give the permission that the court has ordered. **There is no empowerment of the person who has obtained an Anton Piller order to force an entry; that person has no legal ability or capability to do so**

iii. Subpoena Duces Tecum v. SSO

106. Legislation that authorizes a subpoena *duces tecum* is completely **alien** to that of an administrative search onto property and seizure therefrom (see: **BOA Tab 14, Thomson**). The language used by the Supreme Court of Canada was important:

“It is evident that the essential characteristic of the situation created by a search and seizure order (and clearly the **only** one that explains the reaction of both judges) is that a public officer is there bestowed with **authority** to force his way, at any time suitable to him and without warning, into the home or business premises of a person and search for and seize documents or things that he may lay his hands on. Such a characteristic is absolutely **alien** to the situation resulting from the service of a *subpoena duces tecum*, whatever the nature and the number of the documents asked for. The two situations have nothing in common as regards the intrusion into the home and privacy of an individual. The necessity to protect the citizens and their homes against a possible abuse of search powers in no way compares with the need that might be felt of keeping some control over the issuance of *subpoena duces tecum*.”

107. The seminal paragraph in relation to the **Impugned Sections** is from the Supreme Court of Canada in *Hunter v. South am Inc.*, at p. 653, is apt (see: BOA, Tab 17, page 160):

If the issue to be resolved in **assessing the constitutionality** of searches under **s. 10** were whether *in fact* the governmental interest in carrying out a given search outweighed that of the individual in resisting the governmental intrusion upon his privacy, then it would be appropriate to determine the balance of the competing interests *after* the search had been conducted.

Such a *post facto* analysis would, however, **be seriously at odds** with the purpose of s. 8. That purpose is, as I have said, to protect individuals from unjustified State intrusions upon their privacy. That purpose requires a **means of preventing unjustified searches before they happen**, not simply of determining, after the fact, whether they ought to have occurred in the first place.

108. This is exactly the point in relation to the *LPA Petition* and the **LSBC Rules Petition**. Obviously, the *JRPA* Petition is a hearing that involves hindsight yet it is idiosyncratic to Mr. McLean.

iv. Warrantless Searches: Presumptively Unreasonable and Burden Shift

109. Legislation that authorize **warrantless** searches and/or seizures is **presumptively unreasonable** (see: **BOA, Tab 20, Branch**). In the absence of prior judicial authorization, a search or seizure is *presumptively unreasonable*. The burden shifts to the governmental body to justify the reasonableness of the search in that it **must** “rebut the presumption”. In this case, the focus is on the legislation passed by the British Columbia provincial legislature of which the AGBC customarily defends.
110. The test is a three-part conjunctive test as noted in *Branch* citing *Collins*:
- a. whether these searches and/or seizures are authorized by law;
 - b. that the law authorizing the search or seizure is reasonable; and
 - c. that the manner in which the searches and/or seizures was carried out was reasonable.
111. Obviously, the dispute in the *LPA* Petition is whether the *legislation is reasonable* when measured against the *Charter*. In a hearing involving the LSBC Rules, it would be whether the regulations are reasonable. In both cases, the governmental body carries the burden when it does not obtain judicial authorization.

“While I agree with the Chief **Justice** that the administrative nature of the scheme justifies the administrative nature of the review, this does not, in my view, resolve the issue of whether the scope of such review is adequate in the circumstances. I agree with the chambers judge’s conclusion that the absence of meaningful review of the accuracy of the result of the seizure, in

light of the unreliability of the test, raises concerns about the reasonableness of the **ARP scheme**. **Absent** such review, a driver could find herself facing serious administrative sanctions without the precondition for the sanctions being met, and without any mechanism for redress.”

112. It is section 36(a) that expressly confers the precise power and discretion to the LSBC *to limit* that *Charter* rights of the members. As such, the challenge is directed at that very legislation when considering the independence or impartiality (or lack thereof) of said **Discipline Committee** in having such **authority** under said Part 4 of the *LPA*.
113. However, when considering the scope and availability of review under s. 8, the focus is not on s. 36 of the *LPA* but rather it is directed at Rule 4-55 in having a single Chair grant such authorizations. When considering the LSBC’s admitted practice in relation to its scheme where the single Chair does not issue any reasons but rather grants an order, the focus is on the LSBC Rules and the very scheme [emphasis on the scheme]. When considering the LSBC admitted practice in the relation to the **Impugned Rules** and impugned scheme wherein the LSBC (not the Chair *per se* although he does not direct the materials be provided contemporaneous with a search and seizure order) withholds the underlying materials despite the request for the same by members, the challenge is the LSBC Rules and its scheme.
114. Since the AGBC and LSBC are required to discharge all three requirements, it need **only fail** on one for it to be a breach of s. 8. If the **Impugned Sections** and/or **Impugned Rules** are unreasonable, it matters not if the search or seizures that the LSBC has carried out pursuant to the legislation are authorized or whether the manner in which they have been carried out are reasonable. If the **Impugned Sections** and/or **Impugned Rules** are struck down, that ends the matter in its entirety as the test is conjunctive (see:
BOA Tab 18 *Schachter*).

v. Hunter Standard

115. *Hunter* is the default and presumptive test which requires the legislation to meet four requirements:

- (e) a system of prior authorization, by an **entirely neutral and impartial arbiter** who is capable of **acting judicially** in balancing the interests of the State against those of the individual;
- (f) a requirement that the **impartial arbiter must** satisfy himself that the person seeking the authorization has reasonable grounds, **established upon oath**, to believe that an offence has been committed;
- (g) a requirement that the impartial arbiter **must** satisfy himself that *the person seeking* the **authorization** has **reasonable grounds** to believe that something which will afford evidence of the particular offence under investigation will be recovered; and
- (h) a requirement that the **only** documents which are authorized to be seized are those which are **strictly relevant** to the offence under investigation.

vi. Arkinstall: Five Judge Panel Defines Legal Test for Application of Hunter Standard in Authorized Regulatory Searches and Seizures

116. There are exceptions for a more flexible approach to *Hunter* which analyze what the legislation authorizes:

- a. expectation of privacy and intrusiveness;
- b. stigma;
- c. feasibility of obtaining a warrant; and
- d. utility of a warrant.

(see: **BOA Tab 19**, *Arkinstall*)

117. It is clear that the *Hunter* standard is to be applied when considering searches and seizures under the Discipline section against members of the LSBC with the coercive element of s. 88 along with the other panoply of penalties. It is trite that although the legislative provisions could conceivably contemplate the member

consenting to such an intrusion (LSBC pleads that consent is required), the coercive element of the **mandatory** language along with the penal sanctions of failure to comply with statutory orders (see:

Re 2015 LSBC 6 referencing “grave”) the **Impugned Sections** must be viewed as if they authorize search, detention and seizure.

118. The four factors are enumerated and analyzed *infra* while noting it is for the governmental bodies to persuade this Honourable Court that the *Hunter* is not the presumptive test. The Petitioner submits that this is not conceivable when analyzing the **Impugned Sections**.

119. The four factors are as follows:

1. *Expectation of Privacy and Intrusiveness*

(a) **Home:** expectation of privacy in relation to the **home exists** despite the fact that an individual has a lower expectation of privacy related to the regulated thing at home.

(b) **Private office:** entry onto the **private** property of an individual to conduct a search or seizure, the **intrusion is much greater** than a mere demand for production for records.

(c) This is consistent with the Supreme Court of Canada conclusively distinguishing between the *subpoena duces tecum* upon an object and the right to search and seize on **private** property of an object (see: BOA, Tab 14, *Thomson*);

(d) For contextual purposes, it is the same as comparing what transpired in *Mulgrew* versus *McLean*.

(e) **Intrusiveness:** while there is a diminished expectation of privacy in those documents, there is a considerable expectation of privacy in relation to **business premises** and **residences**. As a result, when the regulated thing is obtained or found **only after going into** or through things or places that possess a high expectation of privacy, the search **will be**

intrusive. If a regulator is to make copies as opposed to merely demanding copies, there is an intrusion to “make said copies” by whatever mechanism the regulator is using.

- (f) From a purely legislative standpoint, the right to enter is based on making a copy of the document. One can **only** make a copy of said document of a lawyer if one enters.
- (g) For context purposes, the LSBC uses forensic auditors and a former RCMP investigator to conduct the search in **private** property and a **forensic seizure** of mobile and technological devices. The process and the effect is well documented in the **LSBC Forensic Seizure Paper**.
- (h) **Member’s privileged records and solicitor-client privilege:** for the purposes of the analysis under s. 8 of the *Charter*, the civil and administrative context of the requirement scheme **does not diminish** the expectation of privacy for information that is protected by professional secrecy.

2. *Stigma*

- (a) **Specter of criminality:** whether search, seizure, detention and imprisonment raises the spectre of criminality.
- (b) **Rareness of search and seizures:** how often those are searched and seized through this type of process and proceeding is relevant to whether there is stigma.
- (c) **Madam Justice Gerow finding:**

“[82] In my opinion, the language of Rule 4-43 does not appear to grant powers to the Law Society beyond what the *Legal Professions Act* allows, as was the case in *Gardner*. Section 36 of the *Legal Professions Act* provides that the benchers may make rules to establish a **Discipline Committee**, **delegate authority** to the committee, and authorize an investigation and examination of the books, records and accounts of a lawyer if there is *reason to believe*

that the lawyer *may* have committed **any misconduct**, conduct unbecoming a lawyer or a breach of the Act or the rules. Rule 4-43 provides that the chair of the **Discipline Committee** can order an investigation of the books and records, including electronic records, of a lawyer if he reasonably believes the lawyer or former lawyer may have committed a discipline violation. As noted, s. 29 of the *Interpretation Act* provides that in an enactment, such as the *Legal Profession Act*, the term “record” includes books, letters, papers and anything on which information is stored whether graphic, electronic or otherwise.

(d) **Mr. Justice Grauer finding:** The **authority** of the Law Society to grant an investigation order under Rule 4-43, pursuant to section 36 of the *Legal Profession Act*, is clear (see: McLean v. LSBC, 2017 BCSC 987).

3. *Feasibility of Obtaining a Warrant*

(a) **Feasibility:** where it is feasible to obtain prior authorization, then such authorization is a **precondition** for a valid search and seizure.

ii. *Usefulness of a Warrant*

1. **Purpose:** purpose requires a means of *preventing* unjustified searches before they happen, not simply of determining, whether they ought to have occurred in the first place. A system of *prior authorization*, not one of **subsequent validation**.
2. **Frequency:** the lack of frequency is a factor in that the less frequent the occurrence, then the more usefulness of the warrant. For context and full factual record purposes, the LSBC has provided those statistics in the LSBC Forensic Seizure Paper.

vii. Separate Warrant for Technological Devices

120. Although that landmark finding was in a criminal case of *R. v. Vu*, Cromwell J. writing for a unanimous court regarding separate warrants:

If, for example, an authorizing **justice** were faced with confidential intellectual property or potentially privileged information, he or she might find it necessary and practical to impose limits on the manner in which a computer could be searched. In some cases, authorizing **justices** may find it practical to impose conditions when police first request authorization to search. In others, they might prefer a two-stage approach where they would first issue a **warrant** authorizing the seizure of a computer and then have police return for an additional authorization to search the seized device. This second authorization might include directions concerning the manner of search

viii. Constitutionalization of Privilege

121. Over the course of its long history solicitor-client privilege has evolved from an evidentiary rule, to a substantive right, to a constitutional right protected by the *Canadian Charter of Rights and Freedoms*. Starting in 1999 the Court proceeded to “constitutionalize” solicitor-client privilege, first as a principle of fundamental **justice** protected under s. 7 of the *Charter*, and then as part of the right to privacy under s. 8 of the *Charter*.
122. Prior to that, there were a litany of binding cases in the regulatory environment that found identical and similarly worded search and seizure legislation to be **unconstitutional** against s. 8 of the *Charter* which dovetails into the status and constitutionalization of privilege.
123. The Courts have unanimously concluded the mere fact that a taxpayer has, at a particular time, committed an offence under legislation or the regulations, however trifling that offence, does not afford sufficient justification for the **general power of search and seizure** conferred by s-s. 231(4). That subsection violates s. 8 of the *Charter, Constitution Act, 1982*, in that it contravenes the right of the taxpayer "to

be secure against unreasonable search or seizure (see: *Minister of National Revenue et al v. Kruger et al.*, 1984 CanLII 2889 (F.C.A.)).

124. Section 231(4) of the *ITA* that authorized entry into any building to search for all documents that may afford evidence "as to the violation of any provision of this Act or a regulation" was **so wide** and **unrestrained** as to be a breach of s. 8 (see: *Print Three Inc. et al. and The Queen*, 1985 CanLII 2073 (O.N.C.A.)). In that case, the section read as follows:

231(4) Where the Minister has reasonable and probable grounds to believe that a violation of this Act or a regulation has been committed or is likely to be committed, he may, with the approval of a judge of a superior or county court, which approval the judge is hereby **empowered** to give on ex parte application, authorize in writing any officer of the Department of National Revenue, together with such members of the Royal Canadian Mounted Police or other peace officers as he calls on to assist him and such other persons as may be named therein, to enter and search, if necessary by force, any building, receptacle or place for documents, books, records, papers or things that may afford evidence as to the violation of any provision of this Act or a regulation and to seize and take away any such documents, books, records, papers or things and retain them until they are produced in any court proceedings.

(5) An application to a judge under subsection (4) shall be **supported by evidence on oath** establishing the facts upon which the application is based.

125. The Ontario Court of Appeal stated:

In our view, there are additional reasons to those relied upon by the Federal Court of Appeal for holding the subsection to be in breach of s. 8. It is clear that to meet the standards of reasonableness there must first be an independent arbiter (judge) who is satisfied that there are reasonable grounds for believing that an offence has been committed (see: *Hunter et al. v. Southam Inc.*, *supra*). In s. 231(4) and (5), it is the Minister who has to have the reasonable and probable grounds and there is no standard or conditions precedent set out for the judge on which to base his assessment of whether the Minister's belief is properly founded. Mr. Kelly argued that

the only reasonable construction of s-s. (5) is that facts must be laid before the judge so he can be satisfied that the Minister has reasonable and probable grounds. *Even if* the subsection could be so construed, there are, as we have noted, additional flaws in s. 231(4) and (5). There is no requirement that the Minister have grounds to believe that evidence is likely to be found at the place of the search and there is no requirement that he present such grounds to the judge. There is, equally, no direction as to what is to be issued by the judge in granting his "approval". It is the Minister who issues what is, in essence, the warrant. Finally, the Minister is not required in the authorization to specify the things to be searched for.

It is clear, in our view, that s. 231(4) is in breach of s. 8 and there is no code of search and seizure in the Income Tax Act.

126. The decision of *Baron* is instructive in that a residual discretion even in the judiciary to refuse to issue a search warrant in appropriate circumstances even though the statutory criteria for its issuance have been met is required by s. 8 of the *Charter* and s. 231.3(3) removed this residual discretion. The SCC stated that a subsection provides that a judge "shall" issue the warrant once satisfied that the three statutory conditions set out therein have been satisfied. The word "shall" is normally to be construed as imperative unless such an interpretation would be utterly inconsistent with the context in which it has been used and would render the sections irrational or meaningless. Nothing in the context of s. 231.3 renders an imperative interpretation of the word "shall" in s. 231.3(3) inconsistent with the balance of the section or makes it irrational or meaningless.
127. The removal of the discretion to refuse to issue a warrant when all statutory criteria are met takes away the issuing judge's "balance wheel" function. In order to fulfil properly the "balance wheel" role required by s. 8 of the *Charter*, a judge must be able to weigh all the surrounding circumstances to determine whether in each case the interests of the state are superior to the individual's right to privacy. By restricting the factors that a judge may consider, Parliament had improperly restricted a judge's ability to assess the reasonableness of a proposed search.

128. Section 231.3(3) denied the issuing judge the discretion to refuse to issue a warrant where in all the circumstances a search or seizure would be unreasonable and, indeed, may require a judge to authorize an unreasonable search or seizure.

129. For context purposes and factual underpinning, the then **LSBCCOD** gave the following evidence under oath into his practice in granting or refusing an **ASSO** at page 56 of his February 22, 2016 examination for discovery:

8 Q Just so I have your evidence correct, after
9 receiving these documents, or this document, this
10 opinion, privileged and confidential, you don't 11 seek any
clarification from Mark Bussanich before 12 signing the
order, correct?
13 A I don't seek -- I don't have a communication with
14 Mr. Bussanich with regard to the contents of the
15 materials sent to me because it is my obligation
16 under 4-43 to determine, and the language used in
17 4-43, it is set out here, is if I reasonably
18 believe that a lawyer or former lawyer may have
19 committed a discipline violation. That is the test
20 I apply, reasonably believe, and that is the test
21 which was applied. If the materials do not meet
22 that test, the order is not signed; **if the**
23 **materials meet the test, the order is signed.** 24 269 Q Have
you ever received an application for a Rule 25 4-43 order
that you've rejected? 1 A I don't believe that I have.

130. With that segue and the law established, the right to privilege became constitutionalized. In *Smith v. Jones* (1999), which recognized a limited public safety exception to solicitor-client privilege, Major J. in dissented: “[i]n the criminal context principles embodied in the rules of privilege have gained constitutional protection by virtue of the enshrinement of the right to full answer and defence, the right to counsel, the right against self-incrimination and the presumption of innocence in ss. 7, 10(b), 11(c) and 11(d) of the *Canadian Charter of Rights and Freedoms*” (see: *Smith v. Jones*, [1999] 1 S.C.R. 455 at para 7). Cory J. for the

majority also hinted at the constitutional status of the privilege, stating that it is a “principle of fundamental importance to the administration of **justice**”.

131. The privilege crossed the Rubicon into constitutional territory in *R. v. McClure* (2001), where the Court held that in limited circumstances an individual’s privilege should yield to an accused’s right to make full answer and defence to a criminal charge. Major J. for Court **formally declared** the privilege to be a principle of fundamental **justice** under s. 7 of the *Charter* (see: *R. v. McClure*, [2001] 1 S.C.R. 445 at para paras. 41-2). The Court adopted a two-stage “innocence at stake” test, allowing the privilege to be infringed “**only** where core issues going to the guilt of the accused are involved and there is a genuine risk of a wrongful conviction” (see: *ibid*, para 47).
132. The following year, in *Lavallee* (2002) (see: BOA, Tab 25) Arbour J. held that the privilege is protected under s. 8 of the *Charter* as part of a client’s fundamental right to privacy. The Court relied on the constitutional character of the privilege to strike down legislation (s. 488.1 of the *Criminal Code*, which provided a procedure for determining a claim for privilege over documents seized from a lawyer’s office under a search warrant) because it allowed for the loss of privilege without the client’s knowledge or consent. Arbour J. found that a client has a reasonable expectation of privacy in privileged communications under s. 8 of the *Charter* at para 35:

“A client has a reasonable expectation of privacy in all documents in the possession of his or her lawyer, which constitute information that the lawyer is ethically required to keep confidential, and an expectation of privacy of the highest order when such documents are protected by the solicitor-client privilege.”
133. Arbour J. also held that privileged information is “out of reach for the state” as a matter of fundamental **justice** under s. 7 of the *Charter* at par 24:

“It is critical to emphasize here that all information protected by the solicitor-client privilege is out of reach for the state. It cannot be forcibly discovered or disclosed and it is inadmissible in court. It is the privilege of the client and the lawyer acts as a gatekeeper, ethically bound to protect the privileged information that belongs to his or her client. Therefore, any privileged information acquired by the state without the consent of the privilege holder is information that the state is not entitled to as a rule of fundamental **justice**.”

134. Arbour J. summarized the current status and role of solicitor-client privilege as follows at para 49:

“Solicitor-client privilege is a rule of evidence, an important civil and legal right and a principle of fundamental **justice** in Canadian law. While the public has an interest in effective criminal investigation, it has no less an interest in maintaining the integrity of the solicitor-client relationship. Confidential communications to a lawyer represent an important exercise of the right to privacy, and they are central to the administration of **justice** in an adversarial system. Unjustified, or even accidental infringements of the privilege erode the public’s confidence in the fairness of the criminal **justice** system. This is why all efforts **must** be made to protect such confidences.”

135. This passage is particularly germane when considering subsections 36 (i)(i) and 37.1 of the *LPA* where is specific language regarding the seizure of personal in “in error or incidentally” by the LSBC. When one then reads subsection 88 (1.1), then a lawyer **must** produce records that are confidential or subject to a solicitor-client privilege irrespective of that confidentiality of privilege.
136. Photocopying is a **search** under s.8 of the *Charter* (see: *R. v. Law*, 2002 SCC 10). After considering the arguments of the Crown and the accused concerning whether the photocopying of the contents of the safe constituted a search within the meaning of s. 8 of the *Charter*, and if so, whether it was a reasonable search, Bastarache J. concluded at ¶ 28 to 30 that:

[28] I conclude the police's conduct in this case amounted to a **search** within the meaning of s. 8 of the *Charter*.

137. Deschamps J. found that “[s]olicitor-client privilege has been recognized by this Court as a principle of fundamental **justice**, which applies equally to both civil law and criminal law” (see: *Maranda v. Richer*, [2003] 3 S.C.R. 209 at para 57). The Court as a whole has lent support for this view by citing its criminal cases liberally in the civil context, and indeed recently in a civil case the Court declared that “[t]he protection of solicitor-client confidences is a matter of high importance”.
138. Lower courts have also accepted that “[p]rinciples relating to solicitor-client privilege, established by the Supreme Court of Canada in criminal cases, **apply with equal force and significance in the civil realm.**” (see: *Celanese Canada Inc. v. Murray Demolition Corp.*, 2006 SCC 36).
139. Further, the common law **must** be developed in accordance with *Charter* values, including those *Charter* values embodying the privilege (see: *Smith v. Jones*, above, note 5, para. 28, Major J. (dissenting in the result); *Pepsi-Cola Beverages (West) Ltd.*, [1986] 2 S.C.R. 573, paras. 18-20, McLachlin C.J. and LeBel J.; *Hill v. Church of Scientology of Toronto*, [1995] 2 S.C.R. 1130, paras. 96-98, Cory J.; P.W. Hogg, *Constitutional Law of Canada*, loose-leaf ed., vol. 2, p. 34-24; see also Mahmud Jamal and Brian Morgan, “The Constitutionalization of Solicitor-Client Privilege” (2003), 20 S.C.L.R. (2d) 213, pp. 234-6).
140. The Supreme Court of Canada decision in *Chambre* is self-explanatory and selfevident and analyzed with reference to the **Impugned Sections** *infra*. However, the summary of the **unconstitutional** legislation provision was summarized at para 8:

The first of these provisions, s. 231.2(1), authorizes the Minister of National Revenue (“Minister”), **by notice served personally** or by registered or certified mail, to require a person to provide **information** or **documents** concerning a **taxpayer within a reasonable time stipulated** in the notice. This section therefore allows the CRA, for and on behalf of the

Minister, to send a notary or lawyer a requirement concerning a client. But in most cases, the **client in question has no knowledge of the requirement**. The CRA generally sends the notice to the notary or lawyer without sending a copy to the client, that is, to the taxpayer about whom information is being sought. Moreover, the requirement is issued **without judicial intervention**.

The second provision, s. 231.7, comes into play where a person to whom a requirement is issued refuses to provide the information or documents being sought. In such a case, this section provides that the Minister may have recourse to the courts by means of a proceeding of a summary nature. Section 231.7 authorizes a judge, on application by the Minister, to order a person to provide any access, assistance, information or document sought by the Minister if the judge is satisfied that the person in question did not do so when required under s. 231.1 or 231.2 of the *ITA*. However, this section provides that the judge may make an order in respect of the information or document being sought **only** if the information or document is not protected from disclosure by solicitor-client privilege within the meaning of s. 232(1) of the *ITA*.

The third provision is the definition of “solicitor-client privilege” set out in s. 232(1):

solicitor-client privilege means the right, if any, that a person has in a superior court in the province where the matter arises to refuse to disclose an oral or documentary communication on the ground that the communication is one passing between the person and the person’s lawyer in professional confidence, except that for the purposes of this section an accounting record of a lawyer, including any supporting voucher or cheque, shall be deemed not to be such a communication.

141. When reading subsection 88 (1.1), “**A person who is required under this Act or the rules to provide information, files or records that are confidential or subject to a solicitor client privilege must do so, despite the confidentiality or privilege**”, it is glaringly obvious that that the *LPA* requires far more upon lawyers with respect to requirements to produce as members **must** produce despite the confidentiality or privilege. The Legislature cannot opt out of s. 8 by enacting a legislative exception to professional secrecy. The protection afforded to professional secrecy in the context of a s. 8 analysis is invariably high regardless of whether the seizure has occurred in a criminal or an administrative context.

142. It is trite that the entry into premises for the purposes of seizure of records of a lawyer is inevitably a time consuming process. Lawyers are bound by a litany of statutes with respect to retention provisions such as *Business Corporations Act*, S.B.C. 2002, c. 57, the *Evidence Act*, R.S.B.C. 1996, c. 124, the *Income Tax Act*, R.S.B.C. 1996, c. 215, the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44, the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.), the *Canada Evidence Act*, R.S.C. 1985, c. C-5, the *Personal Information Protection Act*, SBC 2003, c 63.

143. A lawyer is then subject to a litany of regulatory requirements with respect to disposition and retention. As such, when analyzing the Impugned Provisions that so authorize these entries onto **private** property for searches and seizures along with detentions and/or false imprisonment, context and the factual realities are important. It is always important to be cognizant of the legislative definition of record (see: BOA, Tab 3, s. 29):

includes books, documents, maps, drawings, photographs, letters, vouchers, papers and any other thing on which information is recorded or stored by any means whether graphic, electronic, mechanical or otherwise;

144. Where the interest at stake is the professional secrecy of legal advisers, which is a principle of fundamental **justice** and a legal principle of supreme importance, the usual balancing exercise under s. 8 will not be particularly helpful. Stringent standards **must** be adopted to protect professional secrecy.

145. This means that any legislative provision that interferes with professional secrecy more than is absolutely necessary will be labelled **unreasonable** (see: *Chambre*). Because of its importance, the Court has often stated that professional secrecy should not be interfered with unless **absolutely necessary** given that it **must** remain as close to absolute as possible (*Lavallee*, at paras. 36-37; *McClure*, at para. 35; *R. v. Brown*, 2002 SCC 32 (CanLII), [2002] 2 S.C.R. 185, at para. 27; *Goodis v. Ontario (Ministry of Correctional Services)*, 2006 SCC 31 (CanLII), [2006] 2 S.C.R. 32, at para. 15). the general rule is that information protected by professional secrecy that is in the possession of a legal adviser is immune from disclosure (see: *Foster Wheeler Power Co. v. Société intermunicipale de gestion et*

d'élimination des déchets (SIGED) inc., 2004 SCC 18 (CanLII), [2004] 1 S.C.R. 456, at para. 37; *Smith*, at para. 51; *McClure*, at paras. 34-35.

ix. ***Quasi-criminal to Criminal: Unlawful Passing on of Information or Records***

146. The Supreme Court of Canada has found that s. 8 is violated in cases where the information was seized in a context *outside* law enforcement and then passed along for the purpose of law enforcement: *R. v. Colarusso*, 1994 CanLII 134 (SCC), [1994] 1 S.C.R. 20; *R. v. Law*, 2002 SCC 10 (CanLII), [2002] 1 S.C.R. 227; and *R. v. Cole*, 2012 SCC 53 (CanLII), [2012] 3 S.C.R. 34. In those cases, the “sanitizing” effect of the **warrant** as **absent**; the individual’s privacy interest had not been balanced against the state’s interest in law enforcement through judicial pre-authorization.

g. SECTION 9 AND 10 OF THE CHARTER

147. In the 1911 case of *Meering v. Graham White Aviation* stated that an individual can be falsely imprisoned while one is asleep and that is as much an attack on your dignity as if you were aware of it at the time.

148. There is **no set time** for which the imprisonment **must** last as it could be momentary depending on the circumstances. The word “**false**” is misleading as the plaintiff is required **only** to prove a **direct imprisonment**. The Respondent carries the burden of showing the legislation does not detain or imprison members contrary to the *Charter*. The **mistake of fact** is not a defence as if the defendant locked or closed the door to a room with individuals inside the defendant does not intend the specific consequences.

149. The legislation limits liberty in a way that has been described *supra* under s. 7 but it also leads to arbitrary detentions and imprisonments contrary to s. 9 and s. 10. As noted, the coercive element for failure to comply with the *LPA* make such that the Impugned Provisions **must** be analyzed as if they authorized detention and imprisonment in the context of entry, search and seizure under the Impugned Provisions.

h. SECTION 1 OF THE *CHARTER*

150. The phrase “demonstrably justified” puts the onus of justifying a limitation on a right or freedom set out in the *Charter* on the party seeking to limit said right. It is trite that it is on the AGBC and LSBC respectively in each of the respective proceedings.

151. This point can be disposed of rudimentarily. In *Lavallee*, the Court wrote that “if, as here, the violation of s. 8 is found to consist of an unjustifiable impairment of the privacy interest protected by that section, everything else aside, it is **difficult to conceive** that the infringement could survive the minimal impairment part of the *Oakes* test” (para. 46). This applies to not only the type of records (as noted by the SCC in *Branch*) but also the location.

(B) JRRA ANALYSIS ADMINISTRATIVE LAW PRINCIPLES AND BINDING AUTHORITIES

152. The administrative law principles are very well settled in our country and delineated below under each sub heading.

153. Mr. **Justice** Grauer framed some of the issues, but not all, as follows;

The second question is whether, assuming that it had jurisdiction to grant the order, the Law Society nevertheless acted improperly in the manner in which it granted the order, giving rise to procedural unfairness, so that the order must be set aside and, presumably, remitted to the Chair of the **Discipline Committee**. On this aspect, Mr. McLean relies upon: the failure of Mr. Riddell to give reasons for his decision to grant the order; the absence of information under oath to support the decision; the fact that the order was granted without notice to Mr. McLean; the absence of procedural safeguards (such as would, for instance, be available in an application for an *Anton Pillar* order, to which Mr. McLean likens the investigation order); and the conflict of interest that arises from what Mr. McLean terms a solicitor-client relationship that existed between Mr. Bussanich and Mr. Riddell.

a. **STANDARD OF REVIEW (1) OF ISSUES OF NATURAL JUSTICE, PROCEDURAL FAIRNESS, JURISDICTION, VIRES AND CONSTITUTIONALITY**

154. Certain matters have been held by the court to always **warrant** a correctness standard: questions of constitutional law and division of powers (see: *Westcoast Energy Inc. v. Canada (National Energy Board)*, [1998] 1 SCR 322; and *Crevier v. Quebec, supra*). a "true question of jurisdiction" (in determining whether an administrative decision-maker has properly exercised its **authority** granted under a statute) (see: *United Taxi Drivers' Fellowship of Southern Alberta v. Calgary (City)*, [2004] 1 SCR 485) questions of general law that are both of central importance to the legal system as a whole and outside the adjudicator's specialized area of expertise (see: *Toronto (City) v. C.U.P.E., Local 79*, [2003] 3 SCR 77, 2003 SCC 63 at para 62 *per* Lebel J.).
155. There has been debate as to whether the judgment of *Greene* has changed the law with respect to the standard of review relating to the standard of review involving the vires of a regulator's in relation to their rule making **authority**. There are divergent analyses in this regard.

b. **LEGAL CLASSIFICATION OF REGULATORY DISCIPLINE PROCEEDINGS**

156. Discipline proceedings are **quasi-criminal** with the focus being on the consequences (see: BOA Tab 9, *Henderson*). Discipline proceedings are then criminal proceedings to the extent that the regulatory body passes on information from the discipline proceeding to law enforcement (see: *R. v. Cole*).

c. **APPLICANT'S DUTY IN EX PARTE PROCEEDINGS AND HEARING**

157. The Courts have consistently made it clear that a party involved in an *ex parte* process such as applying for a writ of search and seizure has a duty to make full and frank disclosure of material facts (see: *R. v. Araujo*, 2000 SCC 65 (CanLII), [2000] 2 S.C.R. 992 and *R. v. Ling*, 2009 BCCA 70).

158. This was articulately outlined by the Supreme Court of British Columbia in *Pierce v. Mercer Gold Corporation*, 2013 BCSC 1850 at paras. 37 and 38 (BOA, Tab 53)

37 On an *ex parte* application, the relevant principles include the following:

- 1) the applicant **must** make full and frank disclosure of all material facts;
- 2) a material fact is one that may affect the outcome of the application;
- 3) it is for the court to determine if the fact is material, not the applicant or his legal advisors;
- 4) the duty to disclose applies not **only** to known facts, but also to those facts that ought to have been known had proper inquiries been made;
- 5) the extent of the inquiries required depend on the circumstances of the particular case;
- 6) if material non-disclosure is established, the court may deprive the applicant of any advantage gained by reason of the breach of duty to disclose;
- 7) the failure to provide such full and frank disclosure will allow a court to set aside the order without regard to the merits of the application;
- 8) in deciding whether the Order should be set aside, the court **must** consider the importance of the nondisclosed fact to the issues which were to be decided by the judge at the *ex parte* hearing;
- 9) an innocent non-disclosure is an important consideration, but not decisive as to whether the breach is such that the Order is to be set aside; and
- 10) not every omission necessarily results in the order being set aside.

Girocredit Bank Aktiengesellschaft Der Sparkassen v. Heidrun Hedwig Bader, Anton Hans Bader and Tomax Enterprises Ltd., 1998 CanLII 5573 (BC CA), [1998]

B.C.J. No. 1516 (25 June 1998) Vancouver CA 021618
(B.C.C.A.) at para. 45; *Procon Mining and Tunneling Ltd. et al v. McNeil, Bonnar et al.*, 2007 BCSC 454 (CanLII) at paras. 10-11.

159. An *ex parte* applicant **must** be "fastidious" in disclosing all important aspects of the evidence and pointing out what defenses may be available to the opposing party. An applicant is not to exaggerate or misrepresent the strength of the claim being advanced. The duty of disclosure is onerous, particularly when seeking the draconian nature of *Anton Piller* relief: *Green v. Jernigan*, 2003 BCSC 1097 at paras. 24-25.

d. EX PARTE HEARINGS

160. The principle in *Kane* is important that unless expressly or by necessary implication, the regulatory may not hold *ex parte* hearings. The issue turns on whether the rule making power under the **Impugned Sections** of the *LPA* entitled the LSBC to conduct its ASSO Proceeding in *ex parte* of the member.

e. PROCEDURAL FAIRNESS ENGAGED

161. The SCC in *Knight* set the legal test out as follows as to whether procedural fairness is engaged:

- i. **Administrative powers vs. legislative: administrative powers** attract procedural fairness where legislative do not;
- ii. **Final decisions** attract procedural fairness;
- iii. **Exercises of power pursuant to statute** attract procedural fairness; and iv. **Orders and decisions** affecting individual's rights attract procedural fairness.

f. ORAL HEARING REQUIREMENT

162. The jurisprudence is clear that if fact finding and credibility are central issues, fairness requires those issues to be examined at an **oral hearing even if the procedure before the**

administrative decision maker does not specifically require an oral hearing (see: *Khan v. University of Ottawa*, 1997 CanLII 941 (O.N.C.A.)).

g. SWORNEVIDENCE REQUIREMENT IN SUPPORT OF ASSO

163. The requirement is one of the four requirements under the *Hunter* test. This is certainly apposite in a case where said **SSO** entitles entry into offices and homes for forensic seizure under the penalty, *inter alia*, immediate and indefinite suspension from the practice of law.

**h. REGULATOR'S DISCLOSURE OBLIGATIONS: INITIAL, AND
CONTINUOUS AND UPON REQUEST BY MEMBER**

164. The importance of full disclosure to the fairness of the disciplinary proceedings before the Board cannot be overstated. Although the standards of pretrial disclosure in criminal matters would generally be higher than in administrative matters [citation omitted], tribunals should disclose all information relevant to the conduct of the case, whether it be damaging to or supportive of a respondent's position, in a timely manner unless it is privileged as a matter of law. This should include copies of all witness statements and **notes of the investigation** (see: *Markadaney*)

165. The obligation to make disclosure is a **continuing one**. Tribunals have a positive obligation to ensure the fairness of its own processes. The failure to make a proper disclosure impacts significantly on the appearances of **justice** and the fairness of the hearing itself.

166. While the standard for disclosure in administrative law cases generally may be somewhat lesser, in cases involving the loss of one's livelihood, **disclosure cannot be much**, if any, below the criminal standard: see *Kane, supra*. A person defending her licence to practice or defending his livelihood **must** have the opportunity to know the case and to prepare to defend it. Certainly, when faced with an immediate

suspension under the Impugned Rules, the member must know immediately whether he or she should make the decision to consent or not to the ASSO.

i. LSBC’S RULES REQUIREMENT: DELIVERY OF UNDERLYING COMPLAINT TO MEMBER

167. LSBC Rules 3-4 read, *inter alia*, as follows:

Consideration of complaints and other information

3-4 (1) The Executive Director **must consider** every complaint received under Rule 3-2 [*Complaints*].

(2) Information received from *any source* that indicates that a lawyer’s conduct may constitute a discipline violation **must be treated as a complaint** under these rules.

(4) The Executive Director **must deliver to the lawyer** who is the subject of a complaint a copy of the complaint or, if that is not practicable, a summary of it.

(5) Despite subrule (4), if the Executive Director considers it necessary for the effective investigation of the complaint, the Executive Director may delay notification of the lawyer.

(6) When acting under subrule (4), the Executive Director may decline to identify the complainant or the source of the complaint

168. It is again more “standardless” rules passed by the benchers in relation to denying a member natural **justice** and procedural fairness.

i. ASSO VERSUS SEARCH WARRANT

169. The law in this area is important because of a few admissions and arguments by the LSBC:

- i. “The application of the *Charter* in the context of a well regulated activity, such as the practice of law, **is different than it is in the criminal context**. A reasonable regulatory scheme giving rise to civil consequences **may be substantially more intrusive** than would be justified in a criminal context; and
- ii. “Reasons” are not required for a criminal search warrant; and
- iii. where Reasons are required, it is to assist the court.

170. The issue of why reasons are required is addressed below and subparagraph (c) is a misstatement of law. If Reasons are not required in the criminal context, then it would be because of the following onerous requirements **must** be met in first instance:

- i. a criminal search **warrant** requires evidence under oath;
- ii. in order to issue the **warrant** a **justice** of the peace **must** be satisfied that there are reasonable and probable grounds to believe that the prescribed items will be found in a building, receptacle or place and that it has reasonable grounds to believe there will be evidence of an offence has been committed;
- iii. the Constitutional requirement is that the **justice** issuing the **warrant** is **required act judicially** and to assess the evidence as to whether the appropriate standard has been met in an entirely neutral and impartial manner;
- iv. if it does not meet the minimum requirements of **particularity** respecting the things to be search for, it is unreasonable under section 8 (see: *R. v Harris and Lighthouse Video Centres Ltd.* (1987), 35 C.C.C. (3d) 1);
- v. by example with informers, if there is no evidence to substantiate the veracity of the informers, no information as to how the informers acquired this knowledge and no **independent evidence** it will be set aside (*R. v Berge*, (1989), 48 C.C.C. (3d) 185);
- vi. in executing a criminal search warrant, once there is a **control of the premises**, the person has an opportunity to speak to counsel (see: *R. v*

Strachan, [1988] 2 S.C.R. 980); vii. the person whose premises are being searched is entitled to know from examination of the search **warrant** for what reason the search is taking place and the seizing officer **must** know in relation to what offence or circumstances the articles are to be seized. The failure, therefore, to describe the offence sufficiently in the search **warrant** is fatal to the validity of the **warrant**(see: *R. v. Alder* (1977), 37 C.C.C. (2d) 234)); and

viii. in a review of a criminal **warrant** the test is whether or not there is **evidence** upon which the **justice** acting judicially could determine that a **warrant** should be issued and whether the **warrant** contained sufficient particulars of the items to be seized so that it could not be said that the discretion of the officer was substituted for that of the **justice** as to the items seized (see: *R. v. Turcotte*, [1988] 2 W.W.R. 97 (Sask C.A.)).

171. An interested party has a right to apply to set aside or quash a search warrant based on a **defective information** (see: *R. v. Solloway Mills & Co.*, 1930 CanLII 266 (AB CA), [1930] 3 D.L.R. 293 (Alta. S.C.)). This right can **only** be exercised if the applicant is entitled to inspect the warrant and the information **immediately** after it has been executed (see: *A.G. (Nova Scotia) v. MacIntyre*, [1982] 1 SCR 175).

172. The point is discussed by Mr. **Justice** MacDonald of the Alberta Supreme Court in *Realty Renovations Ltd. v. Attorney-General for Alberta et al.* (1978), 1978 CanLII 796 (AB QB), 44 C.C.C. (2d) 249 at pp. 253-54:

Since the issue of a search warrant is a judicial act and not an administrative act, it appears to me to be fundamental that in order to exercise the right to question the validity of a search warrant, the interested party or his counsel **must be able to inspect the search warrant and the information on which it is based**. Although there is no appeal from the issue of a search warrant, a superior Court has the right by prerogative writ to review the act of the **Justice** of the Peace in issuing the warrant. In order to launch a proper application, the applicant should know the reasons or grounds for his application, which reasons or grounds are most likely to be found in the form of the information or warrant. I am unable to conceive anything but a denial of **Justice** if the warrant, after the warrant is executed, are hidden until the police have completed the investigation or until the Crown prosecutor decides that access to the file containing the warrant is to be

contents of the information allowed. Such a restriction could effectively delay, if not prevent review of the judicial act of the **Justice** in the issue of the warrant. If a warrant is void then it should be set aside as soon as possible and the earlier the application to set it aside can be heard, the more the right of the individual is protected.

173. This fits perfectly with the binding authorities on issuance of reasons by administrative tribunals and disclosure obligations of regulatory bodies. It is clear why the LSBC withheld the grounds, particulars, reasons and information for the granting of the **SSO** despite a request for the same but that is **certainly not a justification at law**.

Rather, it is uncontroverted evidence of unlawful conduct.

j. LEGAL CLASSIFICATION OF SSO GRANTED BY THE LSDDC ADM

174. An order that entitles entry into **private** property for the purposes of seizure is an **ASSO** (see: BOA Tab 13, *Bishop* and Tab 30, *Lemare*). As noted by the British Columbia Court of Appeal and *Thomson*, subpoena *duces tecum* are absolutely **alien** to an order that entitles a person to enter a **private** premises to search and seize records at a time convenient to said person and require immediate cooperation of the member under penalty of serious consequences inclusive of loss of livelihood.

k. STANDARD OF REVIEW WHEN TRIBUNALS FAILS TO OR REFUSES TO ISSUE REASONS FOR DECISION

175. It is well established that questions of **procedural fairness** or **natural justice** are subject to the **correctness standard** (see: **BOA Tab 29**, *Ellis-Don Ltd. v. Ontario (Labour Relations Board)*, 2001 SCC 4, para 65).

176. In *Toronto (Metropolitan Police Services Board v. Young*, [1] [1997] O.J. No. 1076 (Div. Ct.) at para. 17 (see: **BOA, Tab 63**) that it is a “jurisdictional issue as to whether there exists a **reasonable apprehension of bias** on the part of the **decisionmaker**. Any error in respect of this is therefore a **reviewable error of law**”.

177. However, where it is alleged that a **tribunal fails to give a party natural justice**, the court does **not engage in an assessment** of the standard of review but evaluates

whether the rules of procedural fairness have been **satisfied** (see: **BOA Tab 45**, *Megens v. Ontario Racing Commission*, 2003 CanLII 26509).

178. The court **cannot** give deference to the choice of a tribunal **whether to give reasons** as the court **must ensure** that the **tribunal** complies with its legal obligation (see: **BOA Tab 40**, *Clifford v. Ontario Municipal Employees Retirement System*, 2009 ONCA 670).

I. TRIBUNALS' REQUIREMENT TO ISSUE REASONS (FORMAL AND/OR INFORMAL; WRITTEN AND/OR ORAL)

179. There are a variety of factors that **militate** in favor of an arbiter issuing Reasons for an ASSO:

- i. **significant importance to the member**: the more importance and significance of consequences, the more the need for Reasons (see: BOA, **Tabs 41, 48, and 9**; *Baker, Neinstein and Henderson*);
- ii. **level of protection of tribunal from judicial review**: the greater the protection from judicial review, the more the need for Reasons (see: BOA, **Tabs 42**, *MacDonald v. Demont*, 2001 NSCA 61);
- iii. **administrative decision makers' admit decision is subject to judicial review**: although not referenced in any current jurisprudence, this can be another factor for the court to consider. When a tribunal admits in some form that their decision is subject to judicial review, then written Reasons should be issued for the person so affected by such a decision;
- iv. **decision is subject to judicial review**: a decision that is subject to judicial review militates in favor of an administrative decision maker issuing Reasons (see: **BOA Tabs 41 to 53**);
- v. **substance of "order" understood**: at least in a minimal way, the substance of the decision **must** be understood, along with why the administrative decision-maker ruled in the way that it did (see: **BOA Tab 43**, *Vancouver*

International Airport Authority, 2010 FCA 158 at paragraph 16); vi. **participatory rights for the member**: The parties **must** be able to decide whether or not to invoke their rights to have the decision reviewed by a supervising court. This is an aspect of procedural fairness in administrative law. If the bases underlying the decision are withheld, a party cannot assess whether the bases give rise to a ground for review (see: **BOA Tab 43**,

Vancouver International Airport Authority, 2010 FCA 158 at paragraph 16); vii. **supervisory role of the courts**: There **must** be enough information about the decision and its bases so that the supervising court can assess, meaningfully, whether the decision-maker met minimum standards of legality (see: **BOA Tab 43**, *Vancouver International Airport Authority*, 2010 FCA 158 at paragraph 16). This role of supervising courts is an important aspect of the rule of law and **must** be respected: *Crevier v. Attorney General of Quebec*, 1981 CanLII 30 (SCC), [1981] 2 S.C.R.

220; *Dunsmuir*, *supra* at paragraphs 27 to 31; viii. **no Appeal procedure in the statute**: “Reasons will be required when no appeal procedure is provided within the statute, or when the decision is **determinative of the issue** and further requests cannot be submitted” (see:

BOA Tab 41, *Baker*); ix. **finality of the decision**: the more final the decision, the more the need for

Reasons (see: **BOA Tab 41**, *Baker*);

x. **How closely the nature of the tribunal process resembles the judicial process**: it is pleaded that it is a fair alternative the court process so it is clearly the alternative administrative adjudicative process of s. 37 (**BOA**

Tab 41, *Baker*); xi. **Unusual Circumstances**: unusual circumstances surrounding the granting of a decision requiring the issuing of Reasons (see: **BOA Tab 46**, *Lerew v. St. Lawrence College of Applied Arts and Technology*, 2005 CanLII

11798;

xii. **Member centric v. polycentric decisions**: individual centric militate in favor of Reasons where polycentric ones do not); no requirement to give

reasons when making "public policy decision", in this case the closing of a school (see: **BOA Tab 50**, *Syndicat des employés de la fonction publique de l'Ontario et al. v. Collège des Grands Lacs et al.* (2005), 200 O.A.C. 101 (Div. Ct.);

xiii. **Draconian orders require Reasons:** irrespective of whether the hearing was ex parte, without notice or “in camera” (see: BOA Tabs 51 to 53;

Dollar Tile, Mercer Gold); xiv. **Transparency require Reasons:** is not just limited to observers who have a specific interest in the decision. The broader public also has an interest in transparency: in this case, the LSBC is a public institution of government and part of our democratic governance structure (see: BOA Tab 43

m. LEGAL EFFECT OF ADM FAILING TO ISSUE REASONS (FORMAL AND/OR INFORMAL; WRITTEN AND/OR ORAL)

180. It is overwhelming that some form of Reasons is required in the search and seizure order proceedings against members under the penalty of immediate and indefinite suspension. A breach of the rules of procedural **justice** is a **sufficient ground, standing alone**, to quash the decision (see: **BOA Tab 40**, *Clifford v. Ontario Municipal Employees Retirement System*, 2009 ONCA 670 at para. 22).

181. A decision will be unreasonable if there are “**no lines of analysis within the given reasons**” that could reasonably lead the tribunal from the evidence before it to the conclusion at which it arrived (see: **BOA 60**, Tabs *Ryan*, *supra*).

182. The “reasonless” decision would still **fail** on the test under the standard of reasonableness as there are no lines of analysis (see: see: BOA Tab 62, *Tsimidis v. Certified General Accountants of Ontario*, 2014 ONSC 4236; *Dunsmuir*). Without the benefit of the **tribunal’s** reasoning about how it employed its expertise to interpret its home statute, it is **impossible** to **determine** whether its decision was reasonable (see:

BOA Tab 42, *Macdonald v. Mineral Springs Hospital*, 2008 ABCA 273).

n. STANDARD OF REVIEW (3): CONFLICTS OF INTERESTS, BIAS, REASONABLE APPREHENSION OF BIAS, PRINCIPLE OF DICTATION AND DEPENDENCE)

183. *Toronto (Metropolitan Police Services Board v. Young*, [1] [1997] O.J. No. 1076 (Div. Ct.) at para. 17 that it is a “jurisdictional issue as to whether there exists a **reasonable apprehension of bias** on the part of the decision-maker. Any error in respect of this is therefore a reviewable error of law” (see: BOA Tab 63)

o. REASONABLE APPREHENSION OF BIAS OF ADM’S AND TRIBUNALS

184. *Golden Valley Golf Course Ltd. v. British Columbia*, 2001 BCCA 392 at paragraphs 43 and 44 (see: **BOA Tab 21**)

The Court found, however, that the lawyer was disqualified because of the fact that "**unknown to the appellant, the confidential and mutually beneficial relationship of solicitor and client existed at all relevant times**" between him and the Ministry.

The question is **only** whether a **reasonable apprehension** of bias arises. The law draws a strict line **in favour of procedural fairness** even where the decision is one of an administrative tribunal as opposed to a court of law.

185. Those that are **primarily adjudicative** in their functions will be **expected** to comply with the standard applicable to courts. That is to say that the conduct of the members of the Board should be such that there could be **no reasonable apprehension of bias** with regard to their decision (see: **BOA 35**, Tabs in *Newfoundland Telephone Co. v. Newfoundland (Board of Commissioners of Public Utilities)* (1992), 1992 CanLII 84 (SCC). In the context of the LSBCCDC or LSBCCOD granting or refusing an ASSO, it is the alternative to the court process under s. 37 so it is necessarily adjudicative in function. The issue is whether the

ADM, the **LSBCCOD** at said time, complied with the standard applicable to the courts. Suffice it to say that if a judge conduct himself or herself with this standard, their term on the bench would be short.

186. The Federal Court found in *Northwest Territories v. Public Service Alliance of Canada*, 2001 FCA 162 as follows:

- i. A civil proceeding before a court or administrative tribunal is not subject to the requirement of a "fair hearing" or of the application of "fundamental **justice**". This is a gap in the *Charter*, and is therefore an area where the continued existence of the Bill of Rights is important: an adjudication authorized by law of a person's rights and obligations will continue to be subject to the requirement of "a fair hearing in accordance with the principles of fundamental **justice**"; and
- ii. The important suppletive role of the *Canadian Bill of Rights* and the significance for any litigant of a fair hearing in the determination of his rights as well as his obligations, I see no compelling reasons why the word "person" in paragraph 2(e) would not include Her Majesty the Queen or the Crown. I see no reason why they, and the citizens that they represent, would not be entitled to a fair hearing when they are a litigant in an administrative or a civil proceeding. It would make a mockery of **justice** if, as a matter of principle, they were not, especially when made a defendant in a proceeding, entitled to the fair hearing protection given by paragraph 2(e).

187. For ease of reference, the relevant section of the *Canadian Bill of Rights* reads as follows:

2 Every law of Canada shall, unless it is expressly declared by an Act of the Parliament of Canada that it shall operate notwithstanding

the *Canadian Bill of Rights*, be so construed and applied as not to abrogate, abridge or infringe or to authorize the abrogation, abridgment or infringement of any of the rights or freedoms herein recognized and declared, and in particular, no law of Canada shall be construed or applied so as to

(e) deprive a person of the right to a fair hearing in accordance with the principles of fundamental **justice** for the determination of his rights and obligations;

p. INDEPENDENCE AND NEUTRALITY OF ADM'S AND TRIBUNALS

188. The decision-maker **must** not **only** be neutral, but **must be seen to** be neutral (see: *Demaria v Law Society of Saskatchewan*, 2013 SKQB 178). **Independence** refers to a status or a relationship to others.

q. VOLUNTARY CONSENT OF OBJECT IN SEARCH AND SEIZURES

189. The legal requirements for a **voluntary** consent:

- i. the individual **must be advised** of his right to **refuse** or withdraw his consent at any time;
- ii. the individual **must** be made aware of the consequences of his consent to the search; and
- iii. the individual **must** be informed of his right to counsel in order to have explained to him the consequences of his consent to the search (see: *Borden* at 162).

190. The cases of *Cole* (search of an employer-issued computer used for personal purposes), *R. v. Blinch* (1993), 31 B.C.A.C. 131 (search of a home where a neighbour had a key and a co-owner's permission to let police in) and *R. v.*

Edwards, [1999] CarswellOnt 3233 (ONSCJ) (search of an inner garage by building superintendent who'd "loaned" the accused her parking spot) stand for that proposition that a **third party cannot** waive the *Charter* rights of a Canadian citizen.

191. Where a person's constitutionally guaranteed right to be free from arbitrary search and seizure is at issue, consent to such searches should be **narrowly construed** (see: *Harkat* (Re), [2010] 3 FCR 169, 2009 FC 659).

r. Breach of *Charter* rights

192. The above law in relation to the **Impugned Sections** and **Impugned Rules** is relevant but it is now the conduct of the LSBC measured against the *Charter* along with the test of consent. **Warrantless** searches are *prima facie* unreasonable (see: BOA Tab 20, Branch). In the absence of prior judicial authorization, the LSBC **must** meet three requirements:
- a. that the search and seizure was authorized by law;
 - b. that the law authorizing the search and seizure was reasonable; and
 - c. that the manner in which the search and seizure was carried out was reasonable.

R. v. Collins, 1987 CanLII 84 (SCC), [1987] 1 S.C.R. 265

193. In order to be reasonable, searches and seizures **must** be authorized by law. The reason for this requirement is clear: under both the *Charter* and the common law, agents of the state can **only** enter onto or confiscate someone's property when the law specifically permits them to do so. Otherwise, they are constrained by the same rules regarding **trespass** and theft as everyone else. There are three ways in which a search can **fail** to meet this requirement.
194. First, the state **authority** conducting the search **must** be able to point to a **specific statute** or common law rule that authorizes the search or seizure. If they cannot do so, the search

cannot be said to be authorized by law. This is why the challenge to the various sections of the statute must be first determined. If various sections upon which the LSBC points

195. Second, the search **must** be carried out in accordance with the *procedural* and *substantive* requirements the law provides. For example, s. 487 of the *Criminal Code*, R.S.C., 1985, c. C-46, authorizes searches, but **only** with a warrant issued by a **justice** on the basis of sworn **information** setting out reasonable and probable grounds. A failure to meet one of these requirements will result in a search and/or seizure which has **not been authorized by law**.

196. Third, and in the same vein, the scope of the search is limited to the area and to those items for which the law has granted the **authority** to search. To the extent that a search exceeds these limits, it is **not authorized** by law. This is yet again why the challenge to the Impugned Sections of the LPA must be challenged first because that will determine

197. The case of *Arkinstall* (see: **BOA Tab 19**) is instructive in how to dispose of a matter, such as this one, where there are challenges to the underlying legislation that a regulatory body purportedly relied upon for an ASSO along with a challenge to the ASSO itself. The Honourable Chief **Justice** Finch, as he then was, found:

[40] The Attorney submits that notwithstanding the appellants' s. 8 Charter challenge, the decision to inspect the appellants' home was nevertheless flawed on administrative law grounds. As a result, the Attorney submits that the s. 8 Charter question need not be answered on this appeal.

[41] In deciding this preliminary issue below, Smart J. said:

55 A preliminary issue is the propriety of addressing the constitutional issues raised on this petition. It is the position of the Attorney General that this case ought to be disposed of on administrative law grounds, and it counsels a course of judicial restraint with respect to the constitutional questions which it contends are better left to a case with a more fulsome set of facts. It says that at its root, the present case concerns two decisions of an administrative decisionmaker: the decision to inspect the petitioners' residence, and the subsequent decision to order

a disconnection of power when the petitioners refused to permit RCMP officers to accompany the EFSI Team. The Attorney General submits that if either decision was made without **authority**, the petitioners should succeed in having it quashed and the petition should be resolved on that basis.

56 In my view, it is not premature to address the constitutional issues raised by the petitioners. While I recognize that authorities such as *R. v. Advance Cutting & Coring Ltd.*, 2001 SCC 70 (CanLII), [2001] 3 S.C.R. 209, caution judicial restraint in making constitutional decisions where a matter is capable of a decision on nonconstitutional grounds, resolving the present case on the narrow basis proposed by the Attorney General will not dispose of the dispute between the petitioners and Surrey. *Even if* I were to find that either or both administrative decisions were made without **authority**, the petitioners would remain subject to a regulatory regime that they contend is **unconstitutional**. The ongoing relationship between Surrey, BC Hydro and the petitioners will continue to engage the impugned provisions of the SSA, and so to defer consideration of the constitutionality of the legislation **would be to leave important live issues unresolved**.

57 I am also satisfied that a sufficient factual basis exists for me to decide the constitutional issues that the petitioners raise.

[42] I agree and would not accede to the Attorney's submission on this issue.

198. This dovetails with the test for public interest litigation in that there are undecided issues of public importance which certainly transcended the litigant.

199. The Honourable **Chief Justice Finch** then summarized the principles as follows at para 44:

In *Hunter*, the Supreme Court of Canada stated that a **warrantless** search is *prima facie* unreasonable. To rebut this presumption of unreasonableness, it is necessary to meet the three requirements established in *R. v. Collins*, 1987 CanLII 84 (SCC), [1987] 1 S.C.R. 265: that the search was authorized by law; that the law authorizing

the search was reasonable; and that the manner in which the search was carried out was reasonable. The **main area of dispute on this appeal** is under the second *Collins* criterion.

200. However, the then **Chief Justice** found, supporting the firmly entrenched practice that our courts prioritize the disposition in relation of the legislation as opposed to certain conduct thereunder, as follows:

[94] To the extent that ss. 18(1) and 19.3(1) of the *SSA* authorize the **warrantless** entry and inspection of residential premises for the regulatory purpose of inspecting electrical systems for safety risks that may be related to marihuana grow-operations, they infringe the appellants' rights under s. 8 of the *Charter of Rights and Freedoms*.

[95] It is unnecessary to consider the appellants' third ground of appeal, namely, whether the chambers judge erred in holding that there were reasonable grounds to conduct an inspection.

i. Is the LSBC able to point specific sections of statutes that authorized the entirety of the ASSO Proceedings and/or the SSO Proceeding against Mr. McLean?

201. Under part (a), the LSBC **must** point to specific sections of the **statute** that authorized its searches and seizures that it conducts in the fashion that it so admits by way, *inter alia*, **LSBC Forensic Seizure Paper** (see: **BOA Tab 4**) and the **LSBC COD's** admissions regarding the search and seizure processes and proceedings. It is imperative to note that the LSBC admits that it is entitled to enter the home of members based the classification of documents as opposed to location as noted *supra* per its filed factum before the Court of Appeal.

202. It is imperative to note that the **SSO Proceeding** commenced upon the application by the LSBC on May 23, 2014 for the **SSO** and continued well into the summer of 2014 wherein it continued to attempt to make demands upon Mr. McLean to enter his residence for the

purposes of a forensic seizure. When Mr. McLean refused to consent to such an intrusion into his personal residence despite seeking the underlying materials for the **SSO**, which the LSBC refused to even respond to such a request, the LSBC **COD** then cited Mr. McLean in his investigative and prosecutorial capacity in relation to his refusal to comply with the very **SSO** that he so granted in his adjudicative capacity.

203. The result of his ‘failure’ or ‘refusal’ to consent to said forensic seizure inside his principal residence in downtown Vancouver resulted in a finding of professional misconduct against him with highly inflammatory and defamatory language in a public decision that his conduct was “grave”. It was later used to find him “ungovernable” and disbar him from the practice of law.

204. As noted, it is submitted that the LSBC is unable to point to specific sections of the *LPA* that entitles it to conduct such **ASSO Proceedings** against members in such fashion. The LSBC is certainly able to point to sections 36(a), (b), (d), (i) (i), 37.1 and 88(1.1) (1.2) for its **authority** to have the **Discipline Committee** adjudicate on the authorization for an **ASSO** of members’ records if it reasonable believes a breach of the Act or rules may have been committed (irrelevant, confidential or subject to solicitorclient privilege) and “other evidence” while compelling the members’ consent thereunder with the protection for the member coming in a process of severing, destruction or return of personal, business or other records that are unrelated to the **ASSO**.

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205. To hone in with analytical precision, the LSBC pleaded as follows at page 5, para 10 of the Amended RTCC filed on April 2015 (see: **PR, Tab 2**).

Pursuant to the **Rule 4-43 Order**, LSBC employees designated in the Rule 4-43 order **attended** at the plaintiff’s office commencing on June 3 until June 5, 2014, attended the office of the plaintiff’s accountant on June 9, 2014, interviewed the plaintiff at his office on June 20, 2014, and attended at the office of the plaintiff’s associate, Gary Lo, on July 16, 2014. On the

June 4, 5 and 9 and July 16 attendances, the investigators reviewed and copied paper and electronic records.

206. In short, the **Rule 4-43 Order** authorized search and seizure of a variety of individuals and persons, outside of the Petitioner, at various locations.

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207. However, in the pleading in the **JRPA Petition**, the LSBC pleaded, while comparing s. 36 to s. 37 at page 13, para 31:

Section 37 of the Legal Profession Act permits the court to order the seizure of records of or relating to a lawyer from a person named in the order if there are reasonable grounds to believe the lawyer may have committed or will commit misconduct (among other grounds). An order under s. 37 goes well beyond Rule 4-43 in that it:

- (a) Is made by the court rather than an administrative officer;
- (b) Authorizes the seizure of records rather than an investigation;
- (c) May be directed to persons other than the lawyer in question, such as a financial institution for the seizure of a lawyer's bank records;
- (d) Is enforceable by contempt proceedings.

208. In relation to subsection (a), as noted by the SCC *Hunter*, the arbiter need not be a judge. The proper terminology is “decision maker” under the ATA which includes: “tribunal member, adjudicator, registrar or other officer”.

209. In relation to subsection (b), the LSBC concedes in *Mulgrew* (see: BOA, Tab 7) that a requirement to produce is a seizure at law. A copy is a search. Further, the demand to enter the premises for the purpose of copying records is a search and seizure at law. Whether an object consents is immaterial as the **impact on the privacy is the**

same. The member is required to cooperate under the *LPA* so the **only** way not to cooperate and consent is to engage in unlawful conduct. The LSBC has attempted to mislead the court on the law in this regard and did so to obtain “security for costs orders”.

210. In relation to subsection (c), the LSBC has then admitted that it exceeded its power under the Impugned Rule 4-43 (as now Rule 4-55) and the Rule 4-43 Order or **SSO** as it was directed at persons other than Mr. McLean.

211. In relation to subsection (d), then that means that the LSBC has admitted that s. 26 does not apply.

212. In that regard, Mr. **Justice** Grauer found as one of the 9 different ways to set aside the **SSO**:

[66] The first question is whether the Law Society exceeded its statutory jurisdiction when it granted the investigation order; in other words, was the order *ultra vires* the Law Society? If so, it must be set aside.

213. Supreme Court Civil Rule 7-7(5) is imperative in this regard:

Application for order on admissions

(6)An application for judgment or any other application may be made to the court using as evidence

(a)admissions of the truth of a fact or the authenticity of a document made

(i)in an affidavit or pleading filed by a party,

(ii)in an examination for discovery of a party or a person examined for discovery on behalf of a party, or

(iii)in response to a notice to admit, or
(b)admissions of the truth of a fact or the
authenticity of a document deemed to be made
under subrule (2)

and the court, **without waiting for the determination of any other question between the parties**, may make any order it considers will further the object of these Supreme Court Civil Rules.

214. As such, it has admitted that the **SSO** exceeded its statutory **authority**. That ends the matter in that regard.

ii. *Are the **Impugned Sections** unreasonable?*

215. Under part (b), the primary issue is whether the **Impugned Sections** of the *LPA* are reasonable with specific focus being subsections 36(a), (b), (d), (i) (i), 37.1, 41(2) and s. 88(1.1) and (1.2) in relation to conferring power upon the LSBC to limit the members and persons' *Charter* rights with respect to being free from unreasonable searches **or** unreasonable seizures.

216. This is a measure of the **Impugned Sections** against the *Charter*.

217. In relation to s. 8, the issue is whether it is reasonable for the LSBC to be **empowered** to have the LSBCDC grant an administrative search and seizure authorization on the basis of reasonable belief that a member may have committed “any misconduct” which compels the member to cooperate with the LSBC making copies of records for its possession that are subject to a solicitor-client privilege.

218. It is respectfully submitted that those sections violate s. 8 of the *Charter* and are not saved under s. 1.

iii. Did the LSBC carry out the search and/or seizure in an unreasonable manner?

219. Under part (c), this is **only** relevant if the *LPA* authorizes the above ASSO Proceedings with execution therein and the sections of the statute are reasonable alone and together.

220. Mr. **Justice** Grauer framed the issue as follows:

[69] The third question is whether, assuming that the Law Society had jurisdiction to grant the order and did not act improperly in doing so, the Law Society nevertheless carried out the order in a manner that constitutes an unreasonable search and seizure. This turns primarily on the question of consent.

[70] The third question is one that could indeed be the subject of a civil action for damages, but I am satisfied that it is not one that can be decided on this application

221. It is not correct that it turns primarily on consent because it is the authorization, demand or order itself that amounts to the search or seizure that must be analyzed in light of the admissions. His Lordship appears to have overlooked said aspect.

222. The LSBC's pleading in the Response to Petition in the JRPA Petition at para 42:

The Rule 4-43 order directed the petitioner to produce documents to his regulator, under the **threat** of disciplinary sanction, in order that the regulator might investigate his conduct.

223. Further, the LSBC pleading is that they take possession of copies without notice so there is no tampering.

224. In light of Rule 3-6(1), which is an admitted threat on plain reading, along with the immediate cooperation, it is not possible at law for any member to give informed and voluntary consent to the ASSO.

(C) ANALYSIS

225. Prior to any analysis into any of the **McLean Proceedings**, there **must** be a determination as to which sections of the *LPA* can be properly be challenged. Clearly, there is a challenge to all of the **Impugned Rules**, as defined supra, that the benchers passed. The issue is which **Impugned Sections** conferred power upon the LSBC to limit the *Charter* rights of the members and persons. The AGBC's position is that the Impugned Sections are merely general and enabling. This position is not analytically precise in that each subsection of the Impugned Sections must be measured against the relevant section of the *Charter*. Further, where certain subsections must be read together, they must be measured in concert against the relevant section of the *Charter*.

a. CHALLENGES TO ENABLING STATUTES VERSUS SUBORDINATE REGULATIONS

226. At the outset, it is important to always note that the AGBC is a bencher (see: *LPA*, s. 4(1)(a)). The AGBC's position in this regard is "The challenge is not properly to the statutory sections, which merely confer discretion and **must** be interpreted as enabling **only** that which is constitutional, but rather to the rules made under them."
227. As noted above, the word "may" means to "empower".
228. The word "**empower**" is defined "to grant the authority, to **delegate**".

229. The definition of “discretion” is particularly compelling as follows:

a: individual choice or judgment

b: power of free decision or latitude of choice within certain legal bounds

(see: Merriam Websters, <https://www.merriam-webster.com/dictionary/discretion>)

230. The patently glaring issue is what are the “certain legal bounds” to which the benchers are **empowered** or have *discretion* to pass rules under each of the Impugned

Sections in isolation or certain of the Impugned Sections when they are read in tandem

- a. *For example, do the benchers have the discretion to pass a rule that grants the Discipline Committee the authority to grant authorizations for a search and seizure of members’ records (privilege or irrelevant) and “other evidence” upon the reasonable belief that a member may have committed “any misconduct”?*

231. By the same logic, what are the certain legal bounds by which an arbiter(s) has the discretion to grant an authorization or an order under each of the Impugned Sections in isolation or certain of the Impugned Sections when they are read in tandem.

- a. *For example, does an authorizing party of the LSBC have the power to grant an ASSO of members’ records (privilege or irrelevant) and “other evidence” upon the reasonable belief that a member may have committed “any misconduct”?*

232. It is important to note that there is no dispute that the LSBC has the power to delegate any and all authority to the Discipline Committee under Part 4 – Discipline of the LPA. The issue is not whether the LSBC has authority to do so but the measure of the said subsection 36(a) against the entrenched and guaranteed rights of members under each section of Part 4.

233. The AGBC puts great reliance on the legal principles articulated in *Slaight*. In *Slaight*, the SCC was distinguishing between whether the challenge was to the legislation or the adjudicated order by said tribunal therein. Clearly, in this case (albeit that the **SSO** by the **COD** is a regulatory search and seizure order based on tracking the sections of s. 36(b) and (d) and s. 88) there is a dispute as to whether the challenge should be to the enabling statute or subordinate rule, and the legislation or the **SSO**. To be clear, it is not as extreme as the AGBC wishes the court to have it. There may be both but there will certainly be one and that is a challenge against certain sections of the *LPA*.
234. The last sentence of paragraph 53 of the **AGBC's Written Responsive Argument** is the essence of the procedural attack on the *LPA* Petition as there is not much that challenges the substance of Petitioner's argument. It is essential argument is that the Respondent is being 'dragged into the Petitioner's war' with the LSBC in that it should challenge the LSBC Rules and the **SSO**. The position is incorrect for a variety of reasons described *infra* and *supra*.
235. With respect to the *Collins* test, the challenge the **Impugned Sections** is clearly the challenge to the second branch of said test: *whether the law authorizing the search and seizure is reasonable*. Specifically, whether the **Impugned Sections** authorizing search and seizure are reasonable. If they are not, parts one and three of the test would simply result in an academic debate if that is so necessary. The Petitioner is amenable to arguing those if the court so requires him to do so as it may be in the public interest but that is merely speculation at this stage. What will remain is entirely dependent upon how an Honourable Justice of the Supreme Court dissect and rules upon the constitutionality of each of the Impugned Sections in isolation and in conjunction, and the remedies granted.

i. AGBC's Misstatement of Legal Test for Challenging Legislation

236. The specific language by the AGBC is as follows, “He *may* **only** challenge the constitutional validity of legislation if he *alleges* that that legislation was the basis on which his constitutionally protected rights were violated.” That is completely unsupported by any **authority** but if that is a legal test, then the Petitioner is so alleging. The LSBC has consistently submitted that the **SSO Proceeding** against Mr. McLean was conducted pursuant to its statutory **authority**. It has said the same about its administrative search and seizure proceedings against other members as denoted in the **LSBC Forensic Seizure Paper** (see: BOA Tab 5).

ii. The Correct Legal Test: Challenging Parent Legislation versus Inferior Regulations

237. That is not the correct legal test in that the correct legal test is framed above. For ease of reference, it is whether each, some or all of the **Impugned Sections** expressly, or by necessary implication, confer the power *to limit* each, some or all of the *Charter* rights of the person.

238. The legal test that the AGBC has put forward is factually and legally incorrect along with being analytically imprecise. In order for the Honourable Court to determine whether there is a challenge to a section of an enabling statute, there **must** be an analytical precision with respect to each section.

239. *Slaight* stands for the proposition:

It is thus impossible to interpret legislation *conferring discretion* as conferring a power to infringe the *Charter*, *unless*, of course, that power is **expressly conferred** or **necessarily implied**. Such an interpretation would require this Court to declare the legislation to be of no force or effect, unless it could be justified under s. 1 of the *Charter*. It follows that an adjudicator, who exercises **delegated** powers, does not have the power to make an order that would result in an infringement of the *Charter*.

240. Put another way, if the legislation conferred an imprecise discretion which neither expressly conferred nor necessarily implied the power *to limit* the right, then one could not interpret it as a conferring a power to infringe the *Charter*.

241. Conversely, if the legislation did not confer a discretion and said section limits a *Charter* right, then the challenge would be to the parent legislation. Section 88 (1.1) is a compelling example in that there is no discretion in that section but merely ‘persons’ **must** produce records, which are confidential or subject to a solicitor-client privilege, when a forced production of records is upon said “person”.

242. Further, if the legislative section confers a discretion but which is not imprecise, then the challenge is to said legislative section to the extent that gives the power to limit that right. Subsections 36 (b) and (d), when read together, are telling examples in that while they do not exhaustively list the considerations to be taken into account in the administrative decision-making process and orders, there is **no doubt** that it does **nothing other than empower** the making of a decision by the **Discipline Committee** that upon reasonable belief that when a member’s conduct may have fallen into a certain category of “any misconduct”, that gives the power to limit a *Charter* right as a member could be subject to a search and seizure.

243. Finally, if the discretion is imprecise yet said power is conferred expressly or by necessary implication, then the challenge is to the legislative section. Subsection 11 (2) is an excellent example in that it is clearly an imprecise discretion yet it confers a power expressly or by necessary implication where the benchers can pass rules in that they are not limited by requirements.

244. In *Slaight*, the legislation at issue was where the adjudicator could order an employer to:

. . . do *any other thing* that it is *equitable* to require the employer to do in order to remedy or counteract any consequence of the dismissal

245. This is certainly not the case in this hearing at bar. In this case, authorizations granted by the **Discipline Committee** (which is established and granted any and all **authority** pursuant to the parent legislation) to the LSBC are made based on a very specific and well defined test of “if there is reason to believe that the lawyer may

have committed any misconduct”. The **Discipline Committee** is entitled to require a lawyer to cooperate including producing records and ‘other evidence’ on request.

246. The word “*may*” is not just permissive but **empowering** (see: *IA*, s. 29, “*may*”).

247. The word “***must***” is to be construed as imperative (see: *IA*, s. 29, “***must***”).

iii. Syllogism: Parent Legislation or Subordinate Rules

248. When analyzing an impugned section of any parent legislation, the following **must** be considered to make the determination as to whether the challenge is to the legislation or the individual carrying out a purported statutory **authority**:

- a. **guaranteed or protected right**: whether the impugned legislative section confers the **power to limit** that right at issue;
- b. **discretion**: whether the impugned legislative section(s) have *conferred* a discretion or power *to limit* that right;
- c. **precision of conferred discretion**: if so, whether that legislative section’s (or sections’) conferred discretion or power to limit that right is precise;
 - i. **precisely conferred**: if the legislative section confers a power upon the subordinate body *to limit* said right;
 - ii. **imprecise yet expressly conferred**: if the legislative discretion conferred power to limit that right is imprecise, then whether said power to limit said right is conferred **expressly**; and
 - iii. **imprecise, not expressly conferred but necessary implied**: if the imprecise discretion is not conferred expressly, whether those legislative powers are conferred by necessary implication.

249. The correct syllogism is as follows:

- b. **Guaranteed/Protected Right at Issue**: in relation to the impugned legislative section, *is a guaranteed or protected right at issue?* If a guaranteed right is at issue, then the impugned legislative sections **must** be analyzed below;

- c. **No discretion:** if the impugned legislative section has *not conferred* any discretion or power to the benchers *to limit* said right(s), then the challenge is directed at the section(s) of the parent legislation/enabling statute;
- d. **Precise Discretion:** if the impugned legislative section has conferred a precise discretion or power to the benchers *to limit* said right(s), then the challenge is **directed** at the section(s) of parent legislation/enabling statute;
- e. **Imprecise Discretion yet Expressly Conferred:** if the impugned legislative section has conferred an imprecise discretion or power to the benchers *to limit* said right(s) but that power is **expressly conferred**, then the challenge is directed at the section of parent legislation/enabling statute; and
- f. **Imprecise Discretion Not Expressly Conferred yet Necessarily Implied:** if the impugned legislative section has conferred an imprecise discretion or power to the benchers *to limit* said right(s) but that power is not **expressly conferred** yet necessarily implied, then the challenge is directed at the section of parent legislation/enabling statute.

250. The AGBC’s argument is at para 44 of the AGBC’s Responsive Brief, “In the present case, the petitioner has articulated no reason why any of the “**Impugned Sections**” should be interpreted as conferring, expressly or by necessary implication, **power** on the part of the benchers of the LSBC *to enact* rules that are in violation of the *Charter*.”

251. This blanket and bold assertion, **absent** analysis, is not helpful in any way in the world of proper legal analysis. The most helpful way is to analyze each section against the proper legal test.

iv. Application of Correct Legal Test to Each Legislative Subsection

1. Part I – Organization (Division 3 Rules and Regulations (11 (1) to (3))

“**BENCHER RULE MAKING AUTHORITY**”: Ss. 11 (1): “The benchers *may* make rules for the governing of the society, lawyers, law firms, articled students and applicants, and for the carrying out of this Act.”

252. It confers a discretion but it is relatively precise. To the extent that it is not precise, it expressly **empowers** rule making authoring to control and govern lawyers.

“BENCHERS NOT LIMITED BY REQUIREMENTS”: *Ss. 11 (2)*: “Subsection (1) is **not limited** by any specific power or requirement to make rules given to the benchers by this Act.”

253. This subsection confers a discretion but it is clearly imprecise. The issue is whether the power to limit is expressly conferred or necessarily implied.

254. One **must** analyze the sections that require the benchers to follow certain requirements which are:

- i.* *Ss. 26.01* is the major source of contention in the proceedings and how *s. 11(b)* can apparently override that subsection.

255. The issue is whether this legislative subsection confers, expressly or by necessary implication, power on the part of the benchers of the LSBC to enact rules that limit *Charter* rights. The LSBC advanced that *11(2)* gave it such power and Mr. Justice MacIntosh appeared to agree.

“BINDING RULES”: *Ss. 11 (3)*: The rules are binding on the society, lawyers, law firms, the benchers, articled students, applicants and persons referred to in section 16 (2) (a) or 17 (1) (a).

256. There is no discretion but merely a conclusory statement about the binding nature of the rules so the challenge is to the legislation; more particularly the scheme under the **Impugned Sections** in noting that the rules are binding.

2. Part 4 – Discipline (Focus: Sections 36 to 39)

257. This section involves discipline proceedings against members with respect to obtaining regulatory search and seizure orders or ASSOS (*s. 36*); judicial search warrants (*s. 37*); discipline hearings (*s. 38*); and Interim Suspensions (*s.39*). It is trite that these proceedings are **quasi-criminal** in nature and the *Hunter* test is presumptively applicable when measuring these sections against the *Charter*.

“ALL AUTHORITY AND RESPONSIBILITY DELEGATED TO DISCIPLINE COMMITTEE UNDER PART 4”: *Ss. 36 (a)*: The benchers may make rules to do any of the following: establish a **Discipline Committee** and **delegate** any or all **authority** and responsibility **under this Part [Discipline s. 36 to 39], other than rule-making authority**, to that committee;

258. It confers a discretion but the discretion is **precise** in that the benchers may do two things:

- a. establish a **Discipline Committee**; and
- b. **delegate** any and all **authority** and responsibility under this Part (Part 4 – Discipline) **except rule making authority**.

259. As such, it is very precise in that the benchers may make rules regarding “delegation of **authority** and responsibility under the Part 4 to the **Discipline Committee** except rule making”. There are four sections under this Part:

- a. Under s. 36, the benchers have been given the power to make rules regarding the **Discipline Committee’s** having full responsibility and **authority** to do the following:
 - i. investigate lawyers;
 - ii. investigate lawyers’ books, records and accounts on reasonable belief that he or she may have committed misconduct;
 - iii. examine lawyers’ books, records and accounts;
 - iv. rescind a citation involving a lawyer;
 - v. prosecute lawyers for misconduct;
 - vi. authorize searches and seizures of lawyer’s books records and accounts; and
 - vii. authorize entry into lawyers’ **private** property for the purposes of seizures of records and “other evidence” of a lawyer on the basis of any misconduct, conduct unbecoming the profession or a breach of this Act or the rules along with compelling cooperation and consent with the search and seizure process.
- b. Under s. 37, the benchers have been given the power to **delegate** any and all **authority** and responsibility to the **Discipline Committee** under this section as well. This means that the **Discipline Committee** could have **authority** and responsibility over a **justice** of the Supreme Court. It appears that this how the LSBC has functioned but refusing to follow the requirements of evidence under oath and “reasonable and probable grounds” along with an entirely and impartial arbiter.
- c. Under s. 38, the benchers have the power to give the **Discipline Committee** any and all **authority** and responsibility involving “discipline hearings”; and

- d. S. 39 would be **inapplicable** to this subsection 36(a) because the benchers could not **delegate** rule making **authority** to the **Discipline Committee**.
260. The AGBC's position is at para 44 of its written brief, "In the present case, the petitioner has articulated no reason why any of the "**Impugned Sections**" should be interpreted as **conferring**, expressly or by necessary implication, **power** on the part of the benchers of the LSBC to enact rules that are in violation of the *Charter*".
261. The impartiality of the arbiter is the most prevalent aspect of the four-part conjunctive test when a search and seizure is authorized. The SCC in *Hunter* (another regulatory case of a regulator granting an internal administrative search and seize order) did state, "This means that while the person considering the prior authorization need not be a judge, he **must** nevertheless, at a minimum, be capable of acting judicially. He [or she] **must not** be someone charged with investigative or prosecutorial functions under the relevant statutory scheme."
262. It is important to remember that the Petitioner has brought many applications to have the corresponding LSBC Rules declared *ultra vires* and they have been dismissed. *Ultra vires* is without **authority** or, literally, beyond powers. A decision which is beyond the powers or **authority** of the person or organization which took it. Regulations too may be *ultra vires* the statute they are made under. The opposite is *intra vires*, within lawful **authority**.
263. This section expressly confers the power *to limit* that right by the designation of such a tribunal. Put another way, *is it within the lawful authority of the LSBC to pass rules that designate the Discipline Committee as the arbiter of search and seizure authorizations, search and seizure orders, and/or composition of the panel for the hearings of citations?*

264. Therefore, it is ss. 36(a) that confers the power on the benchers *to limit* the rights of the members to have an entirely independent arbiter of search and seizure authorizations, search and seizure orders, and the right to a fair hearing of citations.
265. Whether that limit is justifiable is a different discussion. For context, the LSBC specifically pleaded that the single **COD** reasonless search and seizure authorization was an order by an administrative decision maker and he was personally protected from liability under s. 56 of the *Administrative Tribunals Act*.
266. In actuality, that is exactly what the LSBC has done in the face of the challenge to the *vires* is that the **Legislature** expressly authorized it to have the **Discipline Committee** and **delegate** any and all **authority** under this Part to said **Discipline Committee**. The AGBC's defence is that the benchers could always do more. The argument is specious and misconceived as the test is not what the benchers did or how the LSBC acted under the *LPA* but measuring the legislation against the *Charter*.
267. As found in *Axa* (BOA Tab 5), "the legislature is presumed to have knowledge of all that is necessary to produce rational and effective legislation. Specifically, the legislature is presumed to have knowledge of existing law, both common law and statutory, as well as knowledge of **practical affairs**, see *Sullivan and Driedger on the Construction of Statutes*, (4th, Markham: Butterworths, (2002) at page 154."

LSBC exceeded its jurisdiction: Single Chair

268. It is not that the LSBC is not without its constitutional failings in its rules as they are plentiful. To be clear, the Petitioner does not allege ss. 36(a) conferred a power on the part of the Benchers, expressly conferred or by necessary implication, to limit the lawyer's *Charter* rights even further by granting that **authority** to a **single** individual decision maker. It clearly states to the "**Discipline Committee**". To perfectly tie it together, the LSBC could certainly make rules where three or more persons from said Committee would grant such an authorization.

269. There is also another consideration which is the scheme of the *LPA* for review of authorizations. The *LPA* expressly conferred **authority** to the **Discipline Committee** to grant search and seizure authorizations but it did not grant to a single Chair of the **Discipline Committee**. The distinction is important within the scheme of the *LPA*.
270. It is uncontroverted and a public fact that the LSBC abolished the **single person panel** at the turn of the century and composition of panels (**three persons**) is on the LSBC website, “Hearing panels consist of a **current lawyer Bench**er as chair, **another lawyer who is not a Bench**er and an individual who is not a lawyer (three individuals). The non-Bench
- er panel members are selected from two lists: a lawyer pool and a public (non-lawyer) pool. (see: <https://www.lawsociety.bc.ca/complaints-lawyerdiscipline-and-public-hearings/public-hearings-schedules-and-discipline-decisions/abouthearings-and-the-tribunal/hearing-panel-pool-members/>).

Moot Issue

271. *Even if* the LSBC passed a rule wherein three or more persons would grant these internal search and seizure orders, the **Discipline Committee** passing on the appropriateness of a proposed search under the *Legal Profession Act* is caught by the maxim *nemo judex in sua causa*. **The single individual Chair and/or a three or more person tribunal simply cannot be the impartial arbiter(s) necessary to grant an effective authorization.**
272. Moreover, a review on the record is not possible as that **only** applies to decisions under s. 22 or s. 38 (see: *LPA*, s. 47). Moreover, the Chair of the **Discipline Committee** is not a panel. Ergo, there is no internal right of review under sections 36 and 37 of the *LPA* for any orders made thereunder.
273. It is trite that the LSBC is the Applicant in such a proceeding and Mr. McLean was the Respondent in the **SSO** Proceeding. S. 48 of the *LPA* could have conceivably come into play if the **SSO** was granted by a panel or a review board but the Chair

of the **Discipline Committee** is granting such the ASSO. Ergo, the SSO and alike amount to final decisions against the respondent members.

274. To the extent that the **Discipline Committee**, wherein said composition amounted to a panel or review board, was granting search and seizure orders under s. 36 or s. 37 of the *LPA*, then the member may have a right of appeal under s. 48.

275. For sake of convenience, s. 48 of the *LPA*:

48 (1) Subject to subsection (2), any of the following persons who are affected by a **decision, determination or order** of a panel or of a review board may appeal the decision, determination or order to the Court of Appeal:

- (a) an applicant;
- (b) a respondent;
- (c) a lawyer who is suspended or disbarred under this Act;
- (d) the society.

(2) An appeal by the society under subsection (1) is limited to an appeal on a question of law.

276. Ergo, there may be a right of review which factors into a s. 8 analysis, as noted in *Goodwin*, but s. 36(a) would still **fail** in relation to s. 8 of the *Charter* as it would have the **Discipline Committee** adjudicating on the application for a search and seizure of the member when it has those contemporaneous investigatory and prosecutorial functions.

Right to Fair Hearing: Principle of Fundamental Justice

277. The AGBC argues that one should not deal with issues in the hypothetical and abstract without factual context. The factual underpinnings are well identified and delineated. In any event, there is an issue that has affected Mr. McLean and

continues to affect current members of the LSBC in that members of the LSBCDC are engaging in investigatory and prosecutorial functions and then adjudicating as members of hearing panels on the very members that have been subject to their investigative and prosecutorial activities. From a constitutional standpoint, it is a blatant breach of the principles of fundamental **justice** and particularly of members' natural **justice** rights when their livelihood is at stake. Clearly, the benchers defend their passing of such rules and having members of the LSBCDC wearing a myriad of hats contemporaneously on the basis that the Legislature has conferred a power upon said benchers to do so. This is patently a limit upon the protected and guaranteed rights of the members.

278. For example, the current composition of the **Discipline Committee** is at <https://www.lawsociety.bc.ca/about-us/committees-and-task-forces/>

The **Discipline Committee** reviews complaints concerning lawyers or articulated students that are referred by Law Society staff, the Complainants' Review Committee or any other committee. The **Discipline Committee** may dismiss a complaint, instruct staff to make further investigation, order a conduct review of a lawyer or recommend that a citation for a formal hearing be issued against a lawyer. The committee also considers conditional admissions of discipline violations. For more on this committee, see Part 4 of the Law Society Rules.

Christopher A. McPherson, QC (Chair)

Brook J. Greenberg (Vice-Chair)

Jasmin Z. Ahmad

Barbara Cromarty

Michael A. Feder

Julianne K. Lamb

Dean P.J. Lawton, QC

Carolynn Ryan

Heidi Zetzsche

Staff contact

Deborah Armour, QC

279. If one searches the database for decisions and selects a recent one:

https://www.lawsociety.bc.ca/lcbc/apps/hearings/viewreport.cfm?hearing_id=961&t=Pyper-Decision-on-Facts-and-Determination

2018 LSBC 10 Decision issued: March 15, 2018 Citation issued: March 23, 2015

Hearing date: December 4, 2017 Panel:

Dean Lawton, QC, Chair

Haydn Acheson, Public representative

Richard Lindsay, QC, Lawyer

Dean Lawton, QC is a partner with Carfra Lawton LLP in Victoria.

Elected a Bencher for 2014, Dean is currently Chair of the Lawyer Education Advisory Committee, and a member of the Executive Committee, **Discipline Committee**, Recruitment and Nominating Advisory Committee and Truth and Reconciliation Advisory Committee.

280. Simply put, Mr. Lawton is caught by the principle *nemo dex* as he is a member of the **Discipline Committee** while chairing the hearing panel in its adjudicative function.

281. There were five decision involving Mr. McLean:

- i. **2015 LSBC 06** (Sharon Matthews, QC, Chair; Carol J. Gibson, Public representative B.; William Sundhu, Lawyer)
- ii. **2015 LSBC 09** (Kresivo, Everett and Goodleaf)
- iii. **2015 LSBC 39** (Cheema, Day and Wallace)
- iv. **2015 LSBC 01** (Rowbotham, Cayley, and Hickman)
- v. **2016 LSBC 10** (Tony Wilson, Chair Don Amos, Public representative Lynal Doerksen, Bencher John Hogg, QC, Lawyer Patrick Kelly, Public representative Dean Lawton, Bencher Donald Silversides, QC, Lawyer)

282. It is trite that there many of the panel members in the above have also been members of the LSBC **Discipline Committee** which is a blatant conflict of interest, lack of independence and reasonable apprehension of bias.

283. *Pearlman v. Manitoba Law Society Judicial Committee* 1991 CanLII 26 (SCC), [1991] 2 S.C.R. 869, where Iacobucci J. for the Court recalled and approved the following formulation advanced in *St. Boniface Residents' ASSociation Inc. v. Winnipeg (City)* 1990 CanLII 31 (SCC), [1990] 3 S.C.R. 1170:

Would a reasonably well-informed person consider that the interest might have an influence on the exercise of the official's public duty? If that duty is to hear and decide, the test is expressed in terms of a **reasonable apprehension of bias**.

284. The same test applies to administrative bodies as it is the duty of administrative boards, and in particular those which are adjudicative in nature, to provide procedural fairness, an essential ingredient of which is that the board be free of a reasonable apprehension of bias. The most recent articulation of this concept is found in *Newfoundland Telephone Co. v. Newfoundland (Board of Commissioners of Public Utilities)* (1992), 1992 CanLII 84 (SCC) (see: BOA, Tab 35) where Cory J. stated the following at pp. 297-299:

Although the duty of fairness applies to all administrative bodies, the extent of that duty will depend upon the nature and the function of the particular tribunal: see *Martineau v. Matsqui Institution (Disciplinary Board)* (1979)....*The duty to act fairly includes the duty to provide procedural fairness to the parties. That simply cannot exist if an adjudicator is biased. It is, of course, impossible to determine the precise state of mind of an adjudicator who has made an administrative board decision. As a result, the courts have taken the position that an **unbiased appearance** is, in itself, an essential component of procedural fairness. To ensure fairness the conduct of members of administrative tribunals has been measured against a standard of reasonable apprehension of bias. The test is whether a reasonably informed bystander could reasonably perceive bias on the part of an adjudicator. It can be seen that there is a great diversity of administrative boards. Those that are primarily adjudicative in their functions will be*

*expected to comply with the standard applicable to courts. That is to say that the conduct of the members of the Board should be such that there could be **no reasonable apprehension of bias** with regard to their decision.*

285. The issue for this subheading is whether the Legislature granted the power on the benchers *to limit* a right. *The first issue is what is the right?* It can be easily disposed of in that the right to a **fair hearing** is an “independent, unqualified right which finds its essential justification in the sense of procedural **justice** which any person affected by an administrative decision is entitled to have”.
286. Le Dain J. for the Court in the landmark case of *Cardinal v. Director of Kent Institution* (see: *BOA Tab __*, *supra*, at 660-1 explained:
- “... Certainly a failure to afford a fair hearing, which is the very essence of the duty to act fairly, can never of itself be regarded as not of ‘sufficient substance’ unless it be because of its perceived effect on the result or, in other words, the actual prejudice caused by it. If this be a correct view of the implications of the approach of the majority of the British Columbia Court of Appeal to the issue of procedural fairness in this case, I find it necessary to affirm that the denial of a right to a fair hearing **must** always render a decision **invalid**, whether or not it may appear to a reviewing court that the hearing would likely have resulted in a different decision.
287. This certainly means that any member who has been affected by a decision wherein a member of the hearing panel, has also been a member of the LSBC **Discipline Committee**, has been denied the right to a fair hearing.
288. However, the issue as it relates to the *LPA* is whether subsection 36(a) granted a power on part of the benchers to limit that right. Certainly under sections 36 (b) and (d) wherein the LSBC is granting internal search and seizure orders upon its members, the member is certainly entitled to have an entirely neutral arbiter pass on the appropriateness of said authorization. This is well settled law pursuant to the landmark decision in *Hunter* and applied by *Arkininstall*.

289. Under s. 38, the issue is the composition of panels in relation to the hearing of citations and whether the panel is able to act judicially.

290. However, the definition of panel is important:

"panel" means a panel appointed in accordance with section 41;

291. Section 41 of the *LPA* states:

Panels

41 (1)The benchers may make rules providing for any of the following:

- (a)the appointment and composition of panels;
- (b)the practice and procedure for proceedings before panels.

(2)A panel may order an applicant or respondent, or a representative of a respondent law firm, to do either or **both of the following**:

- (a)give evidence under oath or by affirmation;
- (b)**at any time before** or during a hearing, produce all files and records that are in the possession of that person and that may be relevant to a matter under consideration.

292. The *LPA* has conferred a power upon the benchers *to pass* rules that are clearly in violation of the members' *Charter* rights in that the panel, which can be and is often compromised of a member of the **Discipline Committee**, is granting a search and seizure authorization whether that be under s. 36(b) and (d) or s. 38 in relation to whether the member has committed some level of contravention enumerated in said section. A class action may be a possibility in this situation.

293. The phrase "fundamental **justice**" in section 7 has been greatly expanded and encompasses much more than mere procedural rights.

LSBC Perjury

294. To provide the factual context, the Chair of the **Discipline Committee**, when personally sued by Mr. McLean, brought an application to have the claim against him dismissed. He swore the following evidence, which was perjury:

“The granting of the Rule 4-43 Order in my capacity as Chair of the **Discipline Committee is the extent of my involvement** of *any Law Society* matter involving the Plaintiff.”

295. The Plaintiff defeated his application and then had the right to examine under oath. Despite his missing of two examinations for discoveries, he finally attended and he gave the following evidence under oath:

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17 431 Q I'm asking -- I'm just asking off your memory. You
18 remember citing me for not complying with the Rule 19
4-43 order?

20 A I am trying to think. There are, to my 21
recollection, **three** citations, I think, that I 22
issued.

23 432 Q Involving me?

24 A Involving you.

25 433 Q Okay.

296. This evidence is exactly why the Supreme Court of Canada found that the person **must** not be someone charged with investigative or prosecutorial functions under the relevant statutory scheme. As noted *supra*, the **Discipline Committee** has significant investigatory and prosecutorial functions. The protected right is to be free from unreasonable search or seizure, and Ss. 36(a) is a **precise discretion** conferred upon the benchers to limit that right by “**delegate** any or all **authority** and responsibility under this Part, other than rule-making **authority**, to that committee”. To the extent that it is an imprecise discretion, the LSBC’s power to limit the right is conferred by subsection 36(a) and the attack **must** be on the constitutionality of this subsection.

297. For context purposes, LSBC hearing panels are, “Hearing panels consist of a current lawyer Benchers as chair, another lawyer who is not a Benchers and an individual who is not a lawyer. The non-Benchers panel members are selected from two lists: a lawyer pool and a public (non-lawyer) pool.”

Authorized Search Or Seizure Upon Reasonable Belief Ss. 36(b) and (d) of LPA

298. Subsections 36(b) and (c) **must** be looked at independently as their language is different in the discretion that the Legislature has conferred upon the benchers.

Ss. 36 (b): The benchers may make rules to do any of the following: **authorize an investigation** of the books, records and accounts of a lawyer if there is *reason* to believe that the lawyer may have committed any misconduct, conduct unbecoming a lawyer or a breach of this Act or the rules;

Ss. 36 (d): The benchers may make rules to do any of the following: require a lawyer or law firm to cooperate with an investigation or examination under paragraph (b) or (c), including producing records and other evidence and providing explanations on request;

Investigation Defined

299. The *LPA* does not define “**investigation**” but Black’s Law Dictionary does and the definition includes “to follow up step by step by patient inquiry or observation”; “to trace or track”; “to search into”; and “to examine or inquire into with care and accuracy”.

300. The *Concise Oxford Dictionary* (9th Edition) provides the following definition of “investigate”: “a) inquire into; examine, study carefully; and b) make a systematic inquiry or search”.

301. This section has conferred a discretion but the discretion is precise in that the LSBC **Discipline Committee** may (**empower** to do so) order an investigation of records on the reasonable belief of “any misconduct”. The issue is not whether a subordinate body has been precluded in doing more but whether the impugned

legislative section has conferred a power upon the benchers *to limit* the guaranteed or protected right of the member. It is not whether the section has limited the right because if it has limited the right, then it is clearly directed at the legislative section. Rather, legal analysis is required when a legislative section has conferred an imprecise discretion to the subordinate body to pass rules. If it confers a power, expressly or by necessary implication, *to limit* that right, then the *Charter* challenge **must** be directed against the legislation. Clearly, the benchers have been given a power to limit a members' *Charter* rights under s. 8 as the regulator may enter, search and seize records upon reasonable belief that a member *may* have committed "any misconduct".

Evidence" Defined

302. "Evidence" is defined in Black's Law Dictionary (Ninth Edition) as "... something (including testimony, documents and tangible objects) that tends to prove or disprove the existence of an alleged fact":

303. Oxford defines "evidence" as follows:

Information drawn from personal testimony, a document, or a material object, used to establish facts in a legal investigation or admissible as testimony in a law court.

Authorized Search Or Seizure Ss. 36(c) and (d) of LPA

Ss. 36 (c): The benchers may make rules to do any of the following: **authorize an examination** of the books, **records** and accounts of a lawyer or law firm;

Ss. 36 (d): The benchers may make rules to do any of the following: require a lawyer or law firm to cooperate with an investigation or examination under paragraph (b) or (c), including **producing records** and **other evidence** and providing explanations on request;

304. To the extent there is discretion, it is precise in that rules can be made to authorize an examination of the records of a lawyer or law firm. The issue is the standard and that is general in terms of the standard.
305. The AGBC's position has merit under these two subsections in that it has **empowered** the LSBC to authorize a search or seizure of the member's records and other evidence (whatever that may mean) in a general sense. However, its position relating to the subsection 36(b) in connection with ss. 36(d) does not contain merit.

Examination Defined

306. The word "**examination**" and its derivatives are defined as:

The Concise Oxford Dictionary, 8th ed. (The Oxford Dictionary) defines this term, in part, as:

... inquire into the nature or condition etc. of ... look closely or analytically at ...

Further assistance in interpreting the meaning of "examine" is found in the definition of the term "examination", which is defined in the Oxford Dictionary, in part, as:

... the act or an instance of examining ... a detailed inspection ...

Black's Law Dictionary, 6th ed. defines the term "examination" as:

An investigation; search; inspection ...

Subsection 36(b) and (d) versus Subsection 36(c) and (d)

307. Under subsection 36(b), the Legislature has conferred a discretion but it is a precise discretion in that that the LSBC has the express power to search and seize records and other evidence on the basis of reasonable belief. There is no requirement of evidence under oath as reasonable grounds is aSSOciated with the evidence under oath.

308. Under subsection 36(c), the Legislature has conferred a discretion for the LSBC to have the **Discipline Committee** authorize a search and seizure of records and other evidence of the member without any legal test for such an authorization.

309. The Latin phrase “*expressio unius est exclusio alterius*” factors into the difference between the two sections. It is also patently clear why the LSBC proceeds under ss. 36(b) as it points to its authority.

Part 10 – General

Ss. 88: Non-disclosure of privileged and confidential information

310. This section is incorrectly and ironically named as it involves **mandatory** disclosure of confidential and privileged records, and their admissibility.

Ss. 88 (1.1): A person who is required under this Act or the rules to provide information, files or records that are confidential or subject to a solicitor client privilege **must do so**, despite the confidentiality or privilege.

311. There is no discretion so the challenge is to this subsection. A person is obligated to do so when they are required.

Ss. 88 (1.2): Information, files or records that are provided in accordance with subsection (1.3) **are admissible** in a proceeding under Part 2, 3, 4 or 5 of this Act, despite the confidentiality or privilege.

312. There is no discretion so the challenge is to this legislative subsection. It is a conclusory statement regarding the admissibility of records, which are subject to a solicitor-client privilege, in a proceeding under Part 4. For example, Part 4 includes applications to the Supreme Court of British Columbia. Ergo, privileged records could be appended to affidavit material and/or referenced in application materials and pleadings so they would be available to the public.

Ss. 88 (1.3): A lawyer who or a law firm that, in accordance with this Act and the rules, provides the society with any information, files or records that are confidential or subject to a solicitor client privilege is deemed conclusively not to have breached any duty or obligation that would

otherwise have been owed to the society or the client not to disclose the information, files or records.

313. This section is the same as the previous one but renumbered and it is merely a conclusory statement. It is the purposive, substantial and unequivocal additions to this legislative section that make the statutory analysis rudimentary.

Conclusion

314. The erudite and articulate analysis by the Federal Court, while applying *Slaight*, is more apropos in *Canada (Information Commissioner) v. Canada (Prime Minister)*, [1993] 1 FCR 427, 1992 CanLII 2414 (FC) (see: BOA, Tab 26). By way of reminder, Rothstein J., as he then was, for the Federal Court delivered the seminal judgment in this area:

The decision under section 14 is one which requires assessment of whether disclosure could reasonably be expected to be injurious to the conduct of federal-provincial affairs by the Government of Canada. This is not a broad **discretionary decision** of the type under consideration in *Slaight Communications, supra*, at page 1079, where the adjudicator could order an employer to:

. . . do *any other thing* that it is *equitable* to require the employer to do in order to remedy or counteract any consequence of the dismissal

In my view the decision to be made under section 14 is confined to the **formulation of an opinion** as to whether or not disclosure of information could **reasonably be expected** to be injurious. While section 14 does *not* exhaustively list the considerations to be taken into account in the decision-making process, there is **no doubt** that it does **nothing other than empower** the making of a decision that **documents fall into a category** exempt from the general rule of disclosure and permits confidentiality if they do. In my opinion, this is a situation analogous to the **first situation** identified by Lamer J. in *Slaight Communications, supra*. If access to government information is a protected right, then it is section 14 that expressly confers the **power to limit** that right. As such, a *Charter* challenge such as the one in this case **must** be directed against the legislation.

315. The section of the legislation read as follows:

Federal-provincial affairs

14 The head of a government institution *may* refuse to disclose any record requested under this Act that contains information the disclosure of which could reasonably be expected to be injurious to the conduct by the Government of Canada of federal-provincial affairs, including, without restricting the generality of the foregoing, any such information

- **(a)** on federal-provincial consultations or deliberations; or
- **(b)** on strategy or tactics adopted or to be adopted by the Government of Canada relating to the conduct of federalprovincial affairs.

316. The Honourable Mr. **Justice** Rothstein put it more succinctly as the syllogism or deductive reasoning employed by our courts:

“If the **decision** by the head of a *government institution* to refuse disclosure is made pursuant to express or implied power granted under section 14, a *Charter* challenge to section 14 would be involved.”

317. The LSBC is a government institution and it points to its duty to protect the public.

318. The law of *res judicata* comes to the forefront in light of the recent decisions by Supreme Court **justices** in **Madam Justice Gerow** and **Mr. Justice Grauer** relating to whether the LSBC and Mr. McLean were involved in the **Damages Action**:

Madam Justice Gerow finding:

“[82] In my opinion, the language of Rule 4-43 does not appear to grant powers to the Law Society beyond what the *Legal Professions Act* allows, as was the case in *Gardner*. Section 36 of the *Legal Professions Act* provides that the benchers may make rules to establish a **Discipline Committee, delegate authority** to the committee, and authorize an investigation and examination of the books, records and accounts of a lawyer if there is *reason to believe*

that the lawyer *may* have committed any misconduct, conduct unbecoming a lawyer or a breach of the Act or the rules. Rule 4-43 provides that the chair of the **Discipline Committee** can order an investigation of the books and records, including electronic records, of a lawyer if he reasonably believes the lawyer or former lawyer may have committed a discipline violation. As noted, s. 29 of the *Interpretation Act* provides that in an enactment, such as the *Legal Profession Act*, the term “record” includes books, letters, papers and anything on which information is stored whether graphic, electronic or otherwise.

Mr. Justice Grauer finding:

“The **authority** of the Law Society to grant an investigation order under Rule 4-43, pursuant to section 36 of the *Legal Profession Act*, is clear” (see: *McLean v. LSBC*, 2017 BCSC 987).

319. Since the Rule 4-55 Orders (Rule 4-43 Orders as they then were) or ASSO track the language of Rule 4-55 and the multiple binding Reasons for Judgment of the aforementioned **Honourable Justices**, the AGBC may be estopped from arguing the benchers did not have **authority** to pass Rule 4-55 and grant Rule 4-55 Orders.

Legislation versus ASSO

320. In the context of the facts involving the **Impugned Sections** versus the **SSO**, the following would be the deductive reasoning or legal test, as The Honourable Mr. **Justice Rothstein** honed in with analytical precision, to apply when determining if the challenge is first to the *LPA* or the **SSO**:

“If the decision by the **Discipline Committee** to grant or refuse an ASSO, which is determined on the basis that it reasonably believes a member may have committed “any misconduct”, is made pursuant to express or implied power granted by some, any or all of the **Impugned Sections**, a *Charter* challenge to some of the **Impugned Sections** would be involved.”

321. The decision to be made by the governmental institution is confined to the **formulation of an opinion** as to whether or not an ASSO should be granted on the basis if there is reason to believe that the lawyer or law firm may have committed any misconduct. S. 36 of the *LPA* exhaustively lists the factors to be taken into account in the decision-making process for the governmental institution.

322. The rights to be free from unreasonable search or seizure is a protected and guaranteed right, then it is sections 36(b) and (d) that expressly confers the **power to limit** that right.

323. It is important to remember those historic and binding passage of the giants of our legal system in the SCC in *Hunter*:

“To read subss. 10(1) and 10(3) as simply allowing the authorizing party to satisfy himself on these questions, **without requiring him to do so**, would in my view be clearly inadequate. Such an amorphous standard cannot provide a meaningful criterion for securing the right guaranteed by s. 8. The location of the constitutional balance between a justifiable expectation of privacy and the legitimate needs of the state cannot depend on the subjective appreciation of individual adjudicators. Some objective standard **must** be established.

Requiring the authorizing party to satisfy himself as to the legality of the inquiry and the standard for an amorphous one, but would, in my view, still be inadequate. The problem is with the stipulation of a reasonable belief that evidence may be uncovered in the search. Here again it is useful, in my view, to adopt a purposive approach. The purpose of an objective criterion for granting prior authorization to conduct a search or seizure is to provide a consistent standard for identifying the point at which the interests of the state in such intrusions come to prevail over the interests of the individual in resisting them. To ~~as~~ associate it with an applicant’s reasonable belief that relevant evidence may be uncovered by the search, would be to

define the proper standard as the possibility of finding evidence. This is a very low standard which would validate intrusion on the basis of suspicion, and authorize fishing expeditions of considerable latitude. It would tip the balance strongly in favour of the state and limit the right of the individual to resist, to **only** the most egregious intrusions. I do not believe that this is a proper standard for securing the right to be free from unreasonable search and seizure.

324. As such, a *Charter* challenge such as the one in this case **must** be directed against subsection 36(b) and (d) as opposed to the **SSO** of the ADM.

325. Clearly, when analyzing this requirement to produce, then ss. 88 (1.1) and (1.2) are read in conjunction and there is no discretionary power in that regard but rather the **mandatory** production by the person who is object therein. Clearly, a *Charter* challenge regarding the person's right of privilege would be directed against the aforementioned subsections as opposed to the **SSO** granted against Mr. McLean wherein he was required to consent to a search and seizure of his records albeit "subject to a solicitor-client privilege".

326. The issue of subsections 36(i)(i) and 37.1 is so bound up in subsections 36(b) and (d) that the challenge is to those legislative subsections in the seizing of records with the protection coming after the search and seizure.

327. In relation to 41(2), the same concerns, *supra*, arise again with a panel having such discretion to authorize a search and seizure of records before a hearing on the extremely low standard of:

- a. possession of that person; and
- b. that *may be relevant* to a matter under consideration.

328. Since it is a requirement to produce, ss. 88 comes back into play but subsections 36(i)(i) and 37.1 do not.

Legislation versus Regulations

329. The intricacies of the legal analysis do not end there which is why the AGBC's dissection with a blunt incorrect tool is unimpressive and unpersuasive. Further, one cannot apply the correct legal test to all the **Impugned Sections** globally or generally. It has to be applied specifically as done throughout the Consolidated Brief.

330. Subsection 36(a) is the perfect segue in this regard which is analyzed below. It is not a matter of dissecting whether a decision was made pursuant to a broad discretionary power versus a confined formula but rather it analyzes the authorized "decision maker" , "arbiter", or tribunal itself.

331. In this specific context, the refined and precise legal test by **Mr. Justice Rothstein** would be as follows:

"If the delegation of **authority** and responsibility to the **Discipline Committee** under some or all of Part 4 Discipline, other than rule making **authority**, by the government institution is made pursuant to express or implied power granted under 36(a), a *Charter* challenge to 36(a) would be involved."

332. At the very least, subsections 36(a)(b)(d) and (i)(i), 37.1, 42 (2) and s.88 (1.1) (1.2) confer the power to limit the rights of members and persons. As such, there **must** be a *Charter* challenge to those sections at first instance.

333. Since subsection 36(a) authorizes a **non-justice** to grant search and seizure orders, the subsection authorizes **warrantless** searches and seizures which are presumptively unreasonable. Ergo, the burden falls upon AGBC to demonstrate that the legislative scheme complies with s. 8 in the context of search and seizures authorized by the DC.

334. However, when considering the member's right to an unqualified right to a fair hearing under s. 38, there does not appear to a "burden shift" or a "presumptive breach" but rather the standard is correctness when applying the tests for independence and bias.

The correct legal tests are applied.

335. For brevity, the AGBC does not have any authority to rebut the presumption in the context of s. 36. To be fair to the AGBC, the argument against s. 38 was not precisely advanced as it was above so the Petitioner shall reserve the right to reply after reviewing of said position.

IMPUGNED SECTIONS OF LPA MEASURED AGAINST CHARTER

i. Section 7

336. This falls squarely upon s. 11(b) of the *LPA* as it apparently gives an arbitrary and unfettered discretion to not be limited in its rule making discretion along with s. 88 as it is seizure of records that are privileged without standards. To that end, the Supreme Court found that reasonable belief was an extremely low standard. When one adds the absence of evidence under oath in s. 36 along with the requirement to produce records that are privileged absolutely, it is certainly “standardless”.

337. The word “govern” means to rule over by right of **authority**. Ergo, the benchers rule making **authority** is **not limited** by any of the requirements to make rules. It is with that vague and limitless discretionary **authority** to the benchers where it appears the provincial legislature neglected to turn their mind to the interplay between s. 11(a – c) other sections that had explicit and implicit requirements.

i. Section 8 of the *Charter*

338. Certain sections of the *LPA* violate s. 8 of the *Charter* in eight different disjunctive ways:

- a. **absence of prior judicial authorization:** section 36(a) expressly confers the discretion on the LSBC to **delegate** the authorization of search and seizures of members’ records and other evidence upon reasonable belief of “any misconduct” 36 (b) and (d) to the **Discipline Committee**.

Warrantless searches and seizures are presumptively unreasonable and there is no **authority** cited by the AGBC in support of legislation that limits professionals' rights in this regard and found to be reasonable under s. 8 and/or s.1 of the *Charter*.

- b. **dependent and partial arbiter:** section 36(a) expressly confers the discretion on the LSBC to **delegate** the authorization of search and seizures of members' records and other evidence upon reasonable beliefs 36 (b) and (d) to the **Discipline Committee**. The Legislature's expressly conferring power upon the LSBC to **delegate** such **authority** is inconsistent with s. 8 as designates an improper arbiter to grant such authorizations.
- c. **absence of evidence under oath:** section 36(b) and (d) offend this requirement for **SSO** but section the AGBC's argument regarding the generality and merely enabling sections of the *LPA* has merit in relation to sections 36(c) and (d);
- d. **absence of reasonable grounds:** section 36(b) and (d) offend this requirement for **SSO** but section the AGBC's argument regarding the generality and merely enabling sections of the *LPA* has merit in relation to sections 36(c) and (d);
- e. **strictly relevant:** subsections 36(i) (i) and 37.1 (relating to subsection 36(b)) contravene this requirement under s. 8 of the *Charter* as, expressly or necessary implication, the *LPA* confers the power on the LSBC to limit the members' rights in this regard.
- f. **unreviewable powers:** s. 36(a) confers the power upon the LSBC to grant internal search and/ seizure authorizations or orders by the **Discipline Committee** which are unreviewable and/or unreviewable before the surrender to the search and/or physical seizure of records (personal, privileged or irrelevant). The other point is that the scheme of the *LPA* is such that a review or appeal under s. 47 and 48 can **only** be triggered. A provision authorizing such an unreviewable power would clearly be inconsistent with s. 8 of the *Charter*;
- g. **seizure of privilege records without meeting *Chambre* test:** sections 36(b) and (d), 36(i) and 37. 1 (in relation to ss. 36(b)) authorize the LSBC to search for and seize records which are "confidential or subject to a solicitor client privilege";
- h. **specific warrant for technological devices:** sections 36(b) and (d), 36(i) and 37. 1 (in relation to ss. 36(b)) the LSBC to search technological data without a specific **warrant** for that search after the forensic seizure;

- i. **Seizure of privilege records without meeting jurisprudential test:** ss. 88 (1.1) and (1.2), along with sections that require a production of records violate persons' privilege rights which are now constitutionalized (**see: *Chambre and Lavalee***)

339. The **only** legitimate source of difference in the law is where the AGBC mentions the *Federation of Law Societies* ("FLS") case (see: AGBC Written Argument at para 35).

The AGBC points to section 68 of the *FLS*:

[68] I add this. The issues that would arise in the event of a challenge to professional regulatory schemes are not before us in this case. Different considerations would come into play in relation to **regulatory audits** of lawyers conducted on behalf of lawyers' professional governing bodies. The regulatory schemes in which the professional governing bodies operate in Canada serve a different purpose from the Act and Regulations and **generally contain much stricter measures to protect solicitor-client privilege.**

340. The starting point is that this hearing is not a challenge to the audit section of the *LPA* which is section 33. For sake of convenience, it reads:

Trust accounts

33 (1) The benchers may require a lawyer or law firm to do any of the following:

- (a) provide information or an annual report concerning the lawyer's or law firm's books and accounts;
- (b) have all or part of the lawyer's or law firm's books and accounts audited or reviewed annually;
- (c) provide the executive director with an accountant's report on the lawyer's or law firm's books and accounts.

341. The section focuses on books and accounts relating to the flow of monies in and out of an operating and trust account. The word "records" is **noticeably missing**

from that section. The definition of record has an extremely expansive meaning under the *IA*.

342. The Petitioner and Respondent differ in their reading of whether the procedural safeguards in *Lavalee* and *Chambre* need to be met in the context of the LSBC searches and seizures upon its members. *Lavalee* was a criminal case but *Chambre* was a regulatory case involving the CRA and demands made upon lawyers and notaries for production of records of their privileged and confidential communications with their clients respectively. To the extent that the Respondent's argument is successful in relation to law societies' access over the objection of clients holding the privilege who assert concerns about privacy and effect on interests in parallel proceedings and have not themselves made any complaint about the lawyer to the LSBC, then it most definitely fails in relation to a member's privilege.

343. Most importantly, the misidentification of the legal issue (the Respondent calls "question" at page 12, para 38, sentence two) provides insight into why the **Impugned Sections** are **unconstitutional**. It demonstrates that counsel in defending the Legislature, some almost six years after passing these deliberate and substantive amendments, cannot identify the proper legal issue even with the benefit of the jurisprudence and hindsight.

344. For sake of convenience, it states:

“The question *would be* whether, given the *breadth* of the data **captured** in a computer search, and the limit of practicality imposed by Rule 455(5), the LSBC *has made adequate provision* in the rule for *exclusion* of solicitor-client privileged material in relation to which the (former) lawyer under investigation owns the privilege. Nothing in s. 88 of the *LPA* compels the *indiscriminate capture* and retention of such material.

345. That is plainly wrong on the language and in relation to the purpose of the

Charter along with member's *Charter* rights from a, but not limited to, section 8 standpoint. The amendment to s. 88 were purposive, deliberate and significant.

346. Ergo, the AGBC's position that it does not compel indiscriminate capture is unequivocally false but the word used is "captured". It is not permissive but rather requires the member to do so by way of amendment with express language. The title is completely misleading as the section relates to **mandatory** disclosure not "nondisclosure".
347. More troubling is the AGBC's unwieldy framing of the issue in "whether the LSBC has made adequate provision in the rule for exclusion of solicitor-client privilege material in relation to which the lawyer under investigation owns the privilege." The word "exclude" is synonymous with "sever" which in this legislative scheme relates to subsections 36(i) and 37.1. If the focus is on the rule relating to excluding records, then the breach has already occurred. It matters not what the benchers fashioned in relation to subordinate legislation as the parent legislation would already be inconsistent with s. 8 and its very purpose. Moreover, exclusion thereafter does not "sanitize" the seizure breach. *Even if* the seizure aspect was found not to be unreasonable, a search of **private** property on the reasonable belief of any misconduct by the **Discipline Committee** is egregiously reasonable.
348. For context, Mr. McLean was displaced from his office for days and then when he does not consent to entry into his home, his conduct is "grave" and he is not a professional.

Section 1

349. In the absence of any evidence to show that the objectives of the Act would be frustrated by adherence to the *Hunter* criteria, it is impossible to conclude that the s. 8 rights would be minimally impaired.

LSBC RULES MEASURED AGAINST THE *CHARTER*

i. Intro

350. The starting point is the distinctions and express admissions by the LSBC about its process in administrative search and seizure proceedings.

Privileged Communications

It is *possible* that the Forensic Copies will include communications between you and **your own legal counsel** over which you may assert a claim of privilege, that is, communications made for the purpose of you seeking and obtaining legal advice from your lawyer.

Please note that your own potential claim of privilege is **distinct** from any potential assertion of your clients' right to claim privilege regarding any legal advice they sought or obtained from you. Regarding this latter type of communications or information, sections 88(1.2), (1.2 and (1.3) of the *Legal Profession Act* provide.

(k) Special Cases

When the Executive Committee discussed the topic of forensic copying, and decided to strike a working group to explore the policy issues arising from it, the question arose as to what happens when the **investigator uncovers material on the hard drive** that doesn't relate to the investigation, but might be evidence of a crime or wrongdoing. The answer to this depends on the nature of the information that is uncovered, and the *reasonable apprehension* of the investigator as to whether the information may constitute a discipline violation, or a matter that **needs to be reported to another authority**.

351. The LSBC has done a formidable job of admitting the process under the **Impugned Rules** (see: Part I, Facts and Chronology). Where the AGBC represents that the **Impugned Sections** do not compel the production of privileged records between the member and his or her counsel, the LSBC had not equivocated in this regard in that there are “**no words of limitation**” with its administrative search and seizure process.

ii. Section 7 of the *Charter* (Re: Rule 3-6 measured against s. 7 of the *Charter*)

1. *Pierce*

352. The seminal case of *Pierce* is controlling **authority** even though liberty may not be at stake wherein the Honourable Court stated this principle of law:

Serious consequences flow from an **adverse finding** of a panel.

Vagueness of language to a degree that permits a “**standardless sweep**” is contrary to principles of fundamental **justice, whether or not** the statute deprives a lawyer of his physical liberty. Where, as here, the right allegedly infringed is the right to practise a profession, **fundamental justice militates against a lack of standards** against which a member of that profession may measure his conduct.

2. Rule 3-6

353. For sake of convenience, Rule 3-6 reads as follows:

Failure to produce records on complaint investigation

3-6 (1) Subject to subrules (2) and (3), a lawyer who is required under Rule 3-5 [*Investigation of complaints*] or 4-55 [*Investigation of books and accounts*] to produce and permit the copying of files, documents and other records, provide information or attend an interview and answer questions and who fails or refuses to do so **is suspended** until he or she has complied with the requirement to the satisfaction of the Executive Director.

(2) When there are special circumstances, the **Discipline Committee** may, in its discretion, order that

(a) a lawyer not be suspended under subrule (1), or

(b) a suspension under this rule be delayed for a specified period of time.

(3) At least 7 days before a suspension under this rule can take effect, the Executive Director **must** deliver to the lawyer notice of the following:

- (a) the date on which the suspension will take effect;
- (b) the reasons for the suspension;
- (c) the means by which the lawyer may apply to the **Discipline Committee** for an order under subrule (2) and the deadline for making such an application before the suspension is to take effect.

354. This is certainly where the AGBC argues that the LSBC is **only empowered** to pass constitutional regulations. In that regard, s. 26.01 lays down six requirements to suspend a member during an investigation. Rules 3-6(1) to (3) do not meet any of them. The LSBC relies on s. 11 (2) for it not being limited by requirements thereunder to pass LSBC Rules. The issue is whether 11(2) **empowers** the LSBC to pass rules 3-6(1) to (3) to which the Petitioner will leave the debate between the AGBC and LSBC.

3. Section 26 of *LPA*: Diction and Analysis re Rule 3-6

Legal Profession Act, s. 26: **Mandatory** Requirements to Suspend Member During Investigation

355. Section 26 of the *LPA* establishes the following **conjunctive mandatory** requirements for a member to be suspended during an investigation:
- a. **Quorum requirement:** only 3 or more benchers may suspend a member during an investigation;
 - b. **Legal test:** before a member is **suspended** three or more benchers **must** be satisfied it is **necessary** to **protect the public**;
 - c. **Proceeding requirement:** provide for a proceeding before three or more benchers to take place **before** a member is **suspended**;
 - d. **Suspension term requirement:** three or more benchers **must set a term of a suspension** after being satisfied at the proceeding that is necessary to protect the public;
 - e. **Right of Review requirement:** **must** provide for review of an order where member is **suspended**; and
 - f. **One of three orders made on review:** the three or more benchers seized of reviewing the suspension order **must make** one of three orders: confirmation, variation or rescission.
356. Rule 3-6 is the punitive investigative rule of the LSBC Rules for failing to comply with a Rule 3-5 or Rule 4-43.

357. Rule 3-6 is deconstructed as follows:

- a. it applies to lawyers;

Legal Test

- b. who are required under Rule 3-5 **OR** Rule 4-43:
 - i. to **produce** and permit the **copying** of files, documents and other records;
 - ii. provide information; and/or
 - iii. attend an interview and answer questions.
- b. it is a trite that a forced production is a seizure (see: *Mulgrew* at para 23) and copying is a search (see: *R. v. Law*, 2002 SCC 10).

Automatic Suspension

- c. who **fails** or **refuses** to do so: **is suspended until** he or she has **complied** with the **requirement to the satisfaction** of the Executive Director;

*3-6(2) Special Circumstances **Must** be Present for Exercise of Discretion*

- d. If there are not “special circumstances”, then the member **is suspended** indefinitely with it taking effect based on the notice until he or she has complied with the requirement to the satisfaction of the Executive Director. If there are “special circumstances”, the member may apply for an order that he or she “not be suspended” or to “delay the suspension”.

- i. Order of “**Not Suspended**”

- i. If the member is able to show “special circumstances”, the **Discipline Committee** then has unlimited discretion to determine whether the member should “not suspended”. This is the very **Discipline Committee** that has authorized an “investigation” or an **ASSO**

1. If the subrule means that the application by the member and decision by the **Discipline Committee** is the “proceeding”, then the subrule does not require the **Discipline Committee** to employ any legal test if that is the “proceeding”.
2. If the subrule means that the application by the member and decision by the **Discipline Committee** is the “review”, then the subrule does not require the **Discipline Committee** to make one of three orders required as the **only** two orders are

“not suspended” or “delay”. The three required orders are **confirmation, variation or rescission**.

ii. Order of “**Delayed Suspension**”:

- i. If the member **only** applies to delay the suspension and is successful, the **Discipline Committee** then has unlimited discretion to determine when that should occur;
 - ii. If the **Discipline Committee** does not delay it, then member **is suspended** on the date of notice;
- e. If the member had to obtain an order to not be suspended, then the member **was suspended (is suspended** at said time) for failure to comply; and
- f. If the member is unable to meet the compliance standard to the “satisfaction” of the Executive Director, the member will never return to the practice of law and the suspension does not have a term.

Definition of “Proceeding”

358. Proceeding is not defined in the *Legal Profession Act* or LSBC Rules. The AGBC pleads in its Response to Petition that the application of Mark Bussanich to the **ADM** for a search and seizure order did not constitute a proceeding (see: AR, **Response to Petition**, paragraph 36). By the Respondent’s theory, an application to a tribunal where an order is made relating to stopping a suspension is not a proceeding. This is fatal to the Rule 3-5.01. In any event, the LSBC’s theory of the law is yet again wrong because in order to have a Petition filed under the JPRA, there has to be a “record of proceeding” filed with the court before the hearing (see: *JRPA*, s. 1).

Quorum Requirement (1)

359. The benchers (which the AGBC is a bencher) passed a rule that suspends a member without satisfying the quorum requirement. The member **is suspended** for failing to comply with Rule 3-5 and/or Rule 4-43. The benchers had no specific power to pass a rule where a member **is suspended** for failure to comply with other LSBC Rules. The

ADM admitted under oath that a member can be suspended for failing to comply with Rule 3-5 or Rule 4-43.

Legal Test Requirement (2)

360. The Benchers passed a rule that suspends a member that does **not stipulate** that three or more benchers **must** be satisfied it is **necessary** to **protect the public** before suspending. The Benchers had **no specific power** to pass a rule where a member **is suspended** for failure to comply with other LSBC Rules as opposed to the specific legislative requirement that three or more benchers being satisfied that it is necessary to protect the public. The requirement is **mandatory**; not discretionary. The ADM, also then Chair of the **Discipline Committee**, admitted under oath that the **only** test employed is whether there are “special circumstances”. This amounts to an admission on behalf of the Respondent that it does not employ the legal test when it is so required (see: SCCR, Rule 7-7(6)). The phrase “special circumstances” is also vague, arbitrary, and grossly disproportionate and fails under s. 7 of the *Charter*.

Proceeding Requirement (3)

361. The Benchers passed a rule that does not require proceeding before three or more benchers to take place **before** a member **is suspended**. The member **is suspended** without a proceeding before three or more benchers as he or she **is suspended** based on a failure to comply with Rule 3-5 or Rule 4-43. The Benchers had **no specific power** to pass a rule where a member **is suspended** without having a proceeding before three or more benchers. This failure alone to meet the **mandatory** requirement is sufficient to strike down Rule 3-5.01 in its entirety for being beyond the jurisdiction of the Respondent, inconsistent with the statute, unreasonable, vague and/or made bad faith.

Suspension Term Requirement (4)

362. The word “term” is defined as “a **limited or definite extent of time**” (see: <https://www.merriam-webster.com/dictionary/term>). The Benchers passed a rule that did not require three or more benchers **to set a term of a suspension** after being satisfied that

is necessary that the member **is suspended** in order to protect the public at a proceeding. The Benchers had **no specific power** to pass a rule whereby the member would be indefinitely suspended and the suspension could **only** end once the Executive Director was satisfied that the member has complied with Rule 3-5 and/or Rule 4-43. This failure alone to meet the **mandatory** requirement is sufficient to declare Rule 3-5.01 ultra vires in its entirety for being beyond the jurisdiction of the Respondent, inconsistent with the statute, unreasonable, vague and/or made in bad faith.

Right of Review Requirement (5)

363. The Benchers passed a rule that does not provide for the requisite right of a review of the order of suspension. The Benchers had no specific power to grant such a rule that deprives a member of the right of review an order of suspension. This failure alone to meet the **mandatory** requirement is sufficient to strike down Rule 3-5.01 in its entirety for being beyond the jurisdiction of the Respondent, inconsistent with the statute, unreasonable, vague and/or made in bad faith.

One of three orders made on review Requirement (6)

364. Since there is no right of review, this requirement is automatically breached as three or more benchers are not selecting one or the three required orders. This failure alone to meet the **mandatory** requirement is sufficient to strike down Rule 3-5.01 in its entirety for being beyond the jurisdiction of the Respondent, inconsistent with the statute, unreasonable, vague and/or made bad faith.

365. Section 47 of the *Legal Profession Act* then becomes applicable:

Review on the record

47 (1) Within 30 days after being notified of the decision of a panel under section 22 (3) or 38 (5), (6) or (7), the applicant or respondent may apply in writing for a **review** on the record by a review board.

366. Section 22 applies to Credential Hearings. This section is inapplicable to a member being suspended for failing to comply with Rule 3-5 or Rule 4-43. Section 38 relates to a discipline hearing which specifically applies to the hearing of a citation (see: Rule 38(1)). Neither section is applicable to a decision made under Rule 3-5.01.

Therefore, there is no right of review relating to Rule 3-5.01.

Discipline Committee

367. As noted on the Respondent's website:

The **Discipline Committee reviews complaints concerning lawyers** or articled students that are referred by Law Society staff, the Complainants' Review Committee or any other committee. The **Discipline Committee may dismiss a complaint, instruct staff to make further investigation, order a conduct review** of a lawyer or **recommend that a citation** for a formal hearing be issued against a lawyer.

368. The phrase "**Discipline Committee**" is referenced **only** four times under the *Legal Profession Act*:

Practice Standards

27(4) (f) permit the **Discipline Committee** established under **section 36 (a)** to consider

- (i) the findings of an investigation into a lawyer's competence to practise law,
- (ii) any remedial program undertaken or recommended,
- (iii) any order that imposes conditions or limitations on the practice of a lawyer, and
- (iv) any failure to comply with an order that imposes conditions or limitations on the practice of a lawyer.

Discipline rules

36 The benchers may make rules to do any of the following:

(a) establish a **Discipline Committee** and **delegate** any or all **authority** and responsibility **under this Part**, other than rule-making **authority**, to that committee;

Review on the record

47 ((3) Within 30 days after the decision of a panel under section 38 (4), (5), (6) or (7), the **Discipline Committee** may refer the matter for a review on the record by a review board.

(3.2) Within 30 days after an order for costs assessed by a panel under a rule made under section 46, the credentials or **Discipline Committee** may refer the matter for a review on the record by a review board.

369. This is not a practice standards issue. This is not a situation of a **Discipline Committee** seeking a review of a Hearing Panel decision. Further, it is clear that the role of the **Discipline Committee** is to apply for reviews; not conduct proceedings or review.

None of those sections are relevant to the **Discipline Committee**'s power to not suspend or delay the suspension under s. 26.01. As such, the scheme of the Act is clear that the **Discipline Committee** does **not** have any **authority** under s. 26.01 to suspend during an investigation.

370. However, Rule 3-5.01 gives the power to the **Discipline Committee**:

(2) When there are special circumstances, the **Discipline Committee** may, in its discretion, order that (a) a lawyer not be suspended under subrule (1), or
(a) a lawyer not be suspended under subrule (1), or
(b) a suspension under this Rule be delayed for a specified period of time.

371. As such, it is an illegal delegation of power to the **Discipline Committee** that is not entitled to make that determination. As such, the entirety of the Rule 3-5.01 **must** be struck down.

372. Even further, the LSBC Rules explicitly do not give such a power to the **Discipline Committee**. It is yet another reason for Rule 3-5.01 to be *ultra vires*.

373. The **Discipline Committee** powers as espoused by the Law Society Rules are as follows:

Consideration of complaints by Committee 4-3 (1)

The **Discipline Committee** must consider **any complaint** referred to it under these Rules and may instruct the Executive Director to make or authorize **further investigation** that the **Discipline Committee** considers desirable

Quorum Requirement (1)

374. If that position is accepted that the **Discipline Committee** is three or more benchers making an order of suspension, then the member would not have a right of review as that would be the proceeding wherein they make such an order. If a member obtains an order being “not suspended” which is in the nature of rescinding the suspension order, then the matter is at an end. If the member **only** obtained an order of delay, then it is conclusive proof that the member **is suspended** for failing to comply with either Rule 3-5 or Rule 4-43.

Legal Test Requirement (2)

375. If that position is accepted that the condition precedent that there **must** be “special circumstances” for the **Discipline Committee** to exercise its discretion not to suspend or delay the suspension, is the same legal test as “three or more benchers **must** be satisfied it is **necessary** to **protect the public before ordering a member suspended during an investigation**”, then there is no right of review for the member. The phrase is “special circumstances” is a condition precedent for the **Discipline Committee** that **must** be met before the **Discipline Committee** to exercise its discretion to “not suspend” or “delay the suspension”. If there are no “special circumstances”, then the **Discipline Committee** is not able to exercise any discretion under the subsection 3-5.01(2) and the member remains suspended with

suspension taking effect based upon the date established under subrule 3-5.01(3)(a). Further, in order for subrule (2) to be triggered, a member **must** apply under subrule 3-5.01(3)(c) as noted, “the means by which the lawyer may apply to the **Discipline Committee** for an order under subrule (2) and the deadline for making such an application before the suspension is to take effect.” Therefore, if a member does not make an application, then the **Discipline Committee** would not know that there are any special circumstances so the suspension. Even on the most favourable position to the Respondent that a member failed or refused to comply with Rule 3-5 or Rule 4-43 and the **Discipline Committee** determined that there were special circumstances without an application from the member under subrule (3)(c), it would be idiosyncratic to that specific situation and it would be of no consequence to the *vires* of the rule. It would still mean the Rule is *ultra vires* because when there are no special circumstances, the member **is suspended** for failure or refusal to comply with Rule 3-5 or Rule 4-43 and the **only** issue that would remain the date on which the suspension will take effect.

376. To the extent that were “special circumstances”, then the **Discipline Committee** is still not applying the correct legal test under the Rule as it just an unfettered discretion as not suspend a member or delay that onset of that suspension.
377. Ergo, if the test under subrule 3-5.01(2) of “special circumstances” **being required before the Discipline Committee** could exercise its discretion to not suspend” is the test for three or more benchers to apply before a member **is suspended**, then is an entirely different legal test as required “satisfied it is necessary to protect the public”. Further, the **Discipline Committee** exercising its unfettered discretion, **only** after there are “special circumstances”, to not suspend is, again, not applying the legal test of whether “three or more benchers are satisfied it is **necessary** to **protect the public before ordering a member suspended during an investigation**”.

378. If a member does not have “special circumstances”, then his or her refusal or failure to comply with Rule 3-5 or Rule 4-43 is the **only** test employed for whether he or she will be suspended. Ergo, three or more benchers would not have applied the test of whether they were satisfied it was necessary to protect the public before issuing such an order. Ergo, the Respondent had no specific power to pass a rule that caused a member to be suspended without three or more benchers being satisfied it was necessary to protect the public.

Proceeding Requirement (3)

379. If the Respondent’s position is that the application by the member under subsection Rule 3-5.01(3) and subsequent order is the “proceeding” before the order is made, then there is no right of review of the order of suspension. The member cannot review the order made by the **Discipline Committee** under s. 47 as it is not made by a panel, not a matter under s. 22 or s. 38. Simply put, the Respondent is on “two horns of a dilemma” in that if the application by the member initiates the “proceeding” whereby the Chair of the **Discipline Committee** decides whether the member is not suspended or suspension is delayed, then it is not the review. If the application by the member under subsection 3 is the

Term Requirement (4)

380. The position cannot be accepted as to the satisfaction of the Executive Director could mean one day, one year, ten years or never. As such, there is no ‘limited or definite extent of time’ as it could be limitless. If the Executive Director is not satisfied in its discretion, the member would never practice law again. Further, the delaying of the onset of the suspension does not alter the fact of there not being a term thereafter.

Right of Review (5)

381. To the extent that subsection 3-5.01(2) is the section where the order is reviewed, then, at law, it means that Rule 3-5.01 is correct on its plain reading in that the member **is suspended** for failing to comply with Rule 3-5 or Rule 4-43 and the

member **must** apply to have that order reviewed by the **Discipline Committee** in order not to be suspended or to merely delay the suspension.

Three Orders (6)

382. To the extent that subsection 3-5.01(2) is the section where the order is reviewed, then the **Discipline Committee** is not entitled to make an order of variation as the **only** two orders for it to select from are “not suspend” and “delay the suspension.”

4. *LPA*, Section 39

383. Under s. 39, which reads as follows:

39 (1) The benchers may make rules permitting 3 or more benchers to do any of the following until the decision of a hearing panel or other disposition of the subject matter of the hearing:

- (a) suspend a respondent who is an individual, if the respondent's continued practice would be dangerous to the public or the respondent's clients;
- (b) impose conditions or limitations on the practice of a respondent who is an individual;
- (c) suspend the enrolment of a respondent who is an articulated student;
- (d) impose conditions or limitations on the enrolment of a respondent who is an articulated student.

(3) Rules made under subsection (1) **must**

- (a) provide for a proceeding to take place before an order is made,
- (b) set out the term of a suspension, condition or limitation, and
- (c) provide for review of an order made under subsection (1) and for confirmation, variation or rescission of the order.

- (4) Rules made under this section may provide for practice and procedure for a matter referred to in subsection (2) (a) and (c) and may specify that some or all practices and procedures in those proceedings may be determined by the benchers who are present at the proceeding.

The benchers passed the following LSBC Rules:

Extraordinary action to protect public

3-10 (1) An order may be made under this rule with respect to a lawyer or articled student who is

(a) **the subject of an investigation** or intended investigation under Rule 3-5 [*Investigation of complaints*], and

(b) not the subject of a citation in connection with the matter under investigation or intended to be under investigation.

(2) If they are satisfied, on reasonable grounds, that **extraordinary action** is necessary to protect the public, 3 or more Benchers may

(a) impose conditions or limitations on the practice of a lawyer or on the enrolment of an articled student, or

(b) **suspend a lawyer** or the enrolment of an articled student.

(3) An order made under this rule or varied under Rule 3-12 [*Procedure*] is effective until the **first** of

(a) final disposition of any citation authorized under **Part 4** arising from the investigation, or

(b) rescission, variation or further variation under Rule 3-12.

Procedure

- 3-12** (1) The Benchers referred to in Rules 3-10 to 3-12 **must not** include a member of the **Discipline Committee**.
- (2) Before Benchers take action under Rule 3-10 [*Extraordinary action to protect public*] or 3-11 [*Medical examination*], there **must be a proceeding** at which 3 or more Benchers and discipline counsel are present.
- (3) The proceeding referred to in subrule (2)
- (a) **must** be initiated by **one** of the following:
 - (i) the **Discipline Committee**;
 - (ii) the Practice Standards Committee;
 - (iii) the Executive Director, and
 - (b) may take place **without notice** to the lawyer or articulated student if the majority of Benchers present are satisfied, on reasonable grounds, that notice would not be in the public interest.
- (4) The lawyer or articulated student and his or her counsel *may be present* at a proceeding under this rule.
- (5) All proceedings under this rule **must be recorded** by a court reporter.
- (6) Subject to the Act and these rules, the Benchers present at a proceeding may determine the practice and procedure to be followed.
- (7) Unless the Benchers present order otherwise, the proceeding is not open to the public.
- (8) The lawyer or articulated student or discipline counsel may request an adjournment of a proceeding conducted under this rule.
- (9) Rule 4-40 [*Adjournment*] applies to an application for an adjournment made before the commencement of the proceeding as if it were a hearing.

- (10) Despite subrule (9), the Executive Director is not required to notify a complainant of a request made under subrule (8).
- (11) After a proceeding has commenced, the Benchers present may adjourn the proceeding, with or without conditions, generally or to a specified date, time and place.
- (12) On the application of the lawyer or articulated student or discipline counsel, the Benchers who made the order, or a majority of them, may rescind or vary an order made or previously varied under this rule.
- (13) On an application under subrule (12) to vary or rescind an order,
 - (a) both the lawyer or articulated student and discipline counsel **must** be given a reasonable opportunity to make submissions in writing, and
 - (b) the Benchers present may allow oral submissions if, in their discretion, it is appropriate to do so.
- (14) If, for any reason, any of the Benchers who made an order under this rule is unable to participate in the decision on an application under subrule (12), the President may assign another Bencher **who is not a member of the Discipline Committee** to participate in the decision in the place of each Bencher unable to participate.

5. LSBC Rule 3-6 versus Rule 3-10 and 12

- 384. The discrepancies between Rule 3-6 and Rule 3-10 and 12 are patently obvious. Rules 3-10 and 12 track much of the language from s. 39 whereas Rule 3-6 fails to meet any of the requirements from s. 26.01. The language between s. 26.01 and s. 39 are synonymous in substance in that three or more benchers may suspend a respondent lawyer when it is necessary to protect the public regarding said respondent

6. LSBC Rule 3-6: Unconstitutionality and Constitutional Defects

385. Rule 3-6 is **unconstitutional** for a litany of reasons under s. 7 and 8 of the *Charter*. If s. 11(2) authorizes this Rule, then it would necessarily be **unconstitutional** as well. However, the bases upon which subsection 11(2) and Rule 3-6 are **unconstitutional** are entirely different. This is an answer, *inter alia*, to the allegation by the

386. **Rule 3-6(1)** violates s. 7 of the *Charter*, *inter alia*:

- ii. the member **is suspended** immediately and indefinitely for failing to comply with an investigation administrative search and seizure authorization, which is not in accordance with the principles of fundamental **justice**, because the suspension flows from “proof” merely that the administrative search and seizure authorization was granted, rather than the validity of such an order or the bases upon which it was granted;
- iii. in that the member **is suspended** immediately and indefinitely for failing to comply with an administrative search and seizure authorization, which is not in accordance with the principles of fundamental **justice**, because the member **is suspended** irrespective of the triviality of and/or the reasons for failure or refusal to comply; and/or
- iv. the word “satisfaction” is exceedingly vague, overbroad and arbitrary.

387. **Rule 3-6(2)** violates s. 7 of the *Charter*, *inter alia*, for the following reasons:

- i. the member **is suspended** indefinitely for failure or refusal to comply with an administrative search and seizure authorization or order, which is not in accordance with the principles of fundamental **justice**, because the member **is suspended** until he or she has complied to the subjective “satisfaction” of the Executive Director of the LSBC; ii. the member **is suspended** immediately and indefinitely for failure or refusal to comply with an administrative search and seizure authorization

or order, which is not in accordance with the principles of fundamental **justice**, as the member may **only** delay or halt the suspension order upon showing “special circumstances”; and

iii. the phrase “special circumstances” is vague and arbitrary when considered in the context of the discretion of the **Discipline Committee** in relation to the very search and seizure order has granted.

388. The issue in this brief is *not* whether the Law Society can impose a suspension during an investigation, but whether it can impose an *automatic* one. It can clearly order a suspension during an investigation. Ironically, Mr. McLean was subject to the process under s. 39 where the LSBC sought an interim suspension. The first application ended in a consent order wherein Mr. McLean consented to certain conditions with respect to his practice, *inter alia*, such as:

v. practice supervisor;

vi. monthly trust reconciliations delivered to the LSBC; and

vii. *Chartered Accountant* performing his trust reconciliations.

389. The Consent Order was executed in late January 2014 wherein the LSBC Trust Audit department declared that he was eligible to return to practice. The LSBC sought to unwind the Consent Order on March 25, 2014 and it was heard in July 2014. It is patently clear that the goal was to obtain certain information and records during the June 3, 2014 execution of the **SSO** to bolster the application to interim suspend Mr. McLean. As noted above, the LSBC’s application failed and Mr. McLean sought costs but could not be granted costs as said panel did not have jurisdiction. Mr. McLean did not even attend the multi day hearing and the LSBC was able to obtain orders to admit fresh evidence and the

LSBC still lost. Leaving aside the LSBC's failed application, s. 26 and s. 39 virtually identical.

390. A law society can **only** enact rules that are consistent with the purposes, scope and objectives of its enabling statute, and its **authority** to do so **must** be exercised in a reasonable manner. However, the fact that **deference** is owed does not mean that a law society has *carte blanche*; there are several grounds for finding **delegated** legislation to be unreasonable, such as where it is manifestly unjust.
391. Protecting the public interest necessarily involves not **only** ensuring that a lawyer delivers legal services in accordance with those core values, but also protecting the public's *perception* in the professionalism of the delivery. While the primary goal of the Law Society is the protection of the public interest, it cannot do so without also protecting the ability of its members to practise law professionally. A law society **must**, as a result, exercise its mandate in a way that not **only** protects the ability of lawyers to act professionally, but that also reinforces the public's perception that lawyers are *behaving* professionally. The flip side is that a law society cannot enact rules which unreasonably undermine public confidence in lawyers.
392. The Law Society's rule that members who **fail** or refuse to comply with the demand of a Rule 4-55 Order are automatically suspended is unreasonable, because it is inconsistent with the Law Society's mandate to protect the public's confidence in the legal profession. When a lawyer **is suspended**, so is public confidence in him or her.
393. Bastarache J. eloquently stated in Green, "That is why the Law Society takes such care in its investigation of complaints regarding professional misconduct or incompetence — it helps ensure that a **suspension is imposed only after at least some minimal procedural protections have been provided**, and then **only** after a

range of lesser penalties has been considered. When a suspension is the result of such a process, the loss of public confidence is warranted.”

394. Under the **Impugned Rules** and procedures, the member **must** immediately consent to the entry into the **private** property for the purposes of seizure and potentially forensic seizure of records (irrelevant, privileged or otherwise). The failure to comply with this requirement means that the member **is suspended** from the practice of law irrespective of the triviality of the breach. The member **is suspended** and then it is **only** a matter of the onset of such a suspension.
395. The economic costs of the suspension are manifest, as are the reputational ones, especially since the rules require the chief executive officer to notify every member of the Law Society and each of the chief **justices** of the courts in BC of the name of a member who **is suspended**. There are no procedural protections, no range of remedies, and no discretionary leeway on the part of the chief executive officer, and it alone attracts an automatic suspension, regardless of justificatory circumstances.
396. The Law Society is in breach of its duty to protect the public from the needless erosion of trust in the professionalism of lawyers.
397. This makes it arbitrary. The absence of discretion, procedural fairness or remedial options stands in stark contrast to other provisions of the *LPA*, particularly s. 26.01, furthering the Law Society’s mandate to establish standards for the competence of lawyers.
398. The lack of discretion is fatal. However, the obscene **unconstitutionality** is that if a member applies to stop or delay the suspension, he or she **must** show special circumstances to do so. Even worse and more **unconstitutional**, the **Discipline Committee** is again adjudicating on the very order that it granted in the first instance. It was **unconstitutional** enough that the **Discipline Committee** was

engaged in investigative and prosecutorial functions but then engaging in the granting of ASSOS. True to form, the LSBC took it yet another step further in having the **Discipline Committee** be the arbiter of whether the member can delay or halt a suspension in relation to their alleged non-compliance with the ASSO.

399. A rule that leads to an *automatic* suspension for not complying with a search or seizure of one's office or home under the reasonable belief by the LSBCCOD that a member may have committed "any misconduct" is so far removed from ensuring the public's confidence in lawyers that it is manifestly unjust, and therefore, unreasonable.

400. To the extent that it does not **fail** under s. 7, it will necessary **fail** under s. 8.

SECTION 8 OF THE *CHARTER*

401. *Does Rule 3-6(2) violate s. 8 of the Charter in that **Discipline Committee** is adjudicating, in its discretion, whether the suspended member, who has failed or refused to comply with the very underlying ASSO order, has showed "special circumstances" to stop or halt the suspension?*

b. *Overlap between s. 7 and s. 8: fair hearings and entirely neutral arbiters*

402. There is much overlap between s. 7 and s. 8 when the issue relates to a fair hearing before an entirely neutral arbiter.

403. In *Re B.C. Motor Vehicle Act*, 1985 CanLII 81 (SCC), [1985] 2 S.C.R. 486, at p. 503, this Court held that the "principles of fundamental **justice** are to be found in the **basic tenets** of our legal system".

404. As Iacobucci J. noted in *Pearlman, supra*, at p. 882, "included in these fundamental principles is the concept of a **procedurally fair hearing** before an impartial decision-maker".

405. In short, Dickson J. concluded in *Hunter* that, as a minimum constitutional requirement, the person authorizing a search **must** be either a judge or a person capable of acting judicially.
406. The impartiality requirement has often been expressed in **Latin** by the principle *nemo debet esse judex in propria causa*: no one ought to be a judge in his or her own cause.
407. For the same reasons above, it **must** be a constitutional requirement that the adjudicative committee, determining whether a member can keep his or her livelihood by “stopping” or “delaying” their suspension for not complying with the **ASSO, Rule 4-55 and/or Rule 3-5**, not be the same adjudicative committee that granted the **ASSO** or made the demands under the Impugned Rules at first instance.
408. On this basis alone, the **Impugned Rules** are **unconstitutional** as Rule 3-6(2) is bound up on the **ASSO** proceedings under the **Impugned Rules** in that Rule 3-6 directly references Rule 3-5 and Rule 4-55 in the component of failure to comply.
409. As stated by the SCC in *Goodwin*,
“The scope and availability of review is part of the analysis under s. 8. A driver’s ability to challenge the accuracy of the ASD result is **critical** to the reasonableness of the ARP regime. Here, the process for **review of the ARP suspensions only** permits the Superintendent of Motor Vehicles to consider whether the applicant was a “driver” and whether the ASD registered a “fail”, “warn”, or the driver refused to provide a sample. The absence of meaningful review of the accuracy of the result of the seizure, in light of the unreliability of the test, raises concerns about the reasonableness of the ARP scheme. **Absent** such review, a driver could find herself facing serious administrative sanctions without the precondition for the sanctions being met, and without any mechanism for redress. The serious consequences of a driver registering a “fail”, combined with an inability to challenge the basis on which these consequences are imposed, render the ARP scheme unreasonable.”

410. Under Rule 3-6(2), the **Discipline Committee**'s discretion is **only** triggered if a member applies to "stop" or "halt" the suspension from taking effect. Even more troubling, the **Discipline Committee** can **only** consider the member's last application to stop the suspension if there are "special circumstances". If there are not special circumstances, the member will remain suspended until he or she has complied with the ASSO to the satisfaction of the Executive Director. If there are special circumstances, the DC still has unfettered discretion to determine whether the suspension should be stopped or delayed. The ability of member to challenge the suspension for failure or refusal to comply with an ASSO is critical to the reasonableness of the scheme under the LSBC Rules with specific reference to the administrative search and seizure proceedings against members. The absence of an ability to review in "normal circumstances" raises extreme concerns about the reasonableness of the LSBC Rules scheme. Moreover, the unfettered discretion of the **Discipline Committee** adjudicating on whether the member should be able to stop a suspension for not complying with its underlying order coupled with the serious consequences of an indefinite suspension make such a scheme unreasonable.

b. Hunter & Arkinstall v. Thomspen, Branch and Mulgrew tests

411. The *Hunter* test is the default test. The governmental body **must** show why there should be a departure from the *Hunter* test. In analyzing the **Impugned Rules**, the government will not be able to demonstrate why there should be a radical departure from the *Hunter* test and why the search and seizure so authorized is a reasonable one. The burden is an extremely heavy one considering the intrusion may be into the "castle" of the member and the seizure may be into privileged records of the member.

c. The Arkinstall Test

412. The BCCA in *Arkinstall v. City of Surrey*, 2010 BCCA 250 enumerated **four factors** in determining whether there should be the justification[s] for the more flexible approach to regulatory searches and seizures. They are **absent** in the context of the searches and seizures apparently authorized by the **Impugned Rules**. many of the “concerns identified by Dickson J. in *Hunter*”, to borrow language from Wilson J., exist in the statutory and particularly regulatory regime and justify requiring a **warrant** by an entirely neutral arbiter with evidence under oath while seizing records that are entirely strictly relevant to the investigation. Further, the seizure cannot be expanded to records that are within the member’s privilege without following the requirements of the Supreme Court of Canada in *Chambre* all while the member loses her practicing status immediately and indefinitely. The four factors and application are as follows:

i. REOP and Intrusiveness

1. **Home:** expectation of privacy in relation to the **home exists** despite the fact that an individual has a lower expectation of privacy related to the regulated thing at home.
2. **Private office:** entry onto the **private** property of an individual to conduct a search or seizure, the **intrusion is much greater** than a mere demand for production for records.
3. **Intrusiveness:** while there is a diminished expectation of privacy in those documents, there is a considerable expectation of privacy in relation to **business premises** and **residences**. As a result, when the regulated thing is obtained or found **only after going into** or through things or places that possess a high expectation of privacy, the search **will be intrusive**. If a regulator is to make copies as opposed to merely demanding copies, there is an intrusion to “make said copies” by whatever mechanism the regulator is using. For context purposes, the LSBC uses forensic auditors and a former RCMP investigator to conduct the search in **private** property and a forensic seizure of mobile and technological devices. This has been characterized as taking a perfect image of all of the contents of the technological devices
4. **Member’s privileged records and solicitor-client privilege:** for the purposes of the analysis under s. 8 of the *Charter*, the civil and administrative context of the requirement scheme **does not**

diminish the expectation of privacy for information that is protected by professional secrecy.

- a. **LSBC Admission:** the LSBC conceded that a reasonable regulatory scheme giving rise to civil consequences may be **substantially more intrusive** than would be justified in a criminal context (see: **LSBC NOA of February 3, 2015**).

ii. *Stigma*

1. **Specter of criminality:** whether search and seizure raises the spectre of criminality.
2. **Rareness of search and seizures:** how often those are searched and seized through this type of process and proceeding is relevant to whether there is stigma.
 - a. **Application:** Rule 4-43 orders are not common. From 2004-2008 there were a total of 46. The LSBC uses two forensic auditors and David McCartney (investigator and CFE) is a former RCMP sergeant who was in charge Robert Pickton inquiry. The stigma is enormous in that it is a permanent mark of shame on the member. Fraud is rarely civil alone and invariably carries a criminal element (see: *Criminal Code*, s. 380). remaining in one's office and asking third parties for passwords and codes to a member's secured devices raises the element that the member is engaged in "criminality". The authorized search in a **private** office occurs front of work colleagues (law or business). The authorized search is conducted at one's home occurs in front of neighbours and friends. The actual physical seizure is forensic in nature and long lasting which carries a criminal stigma. The Court can take judicial notice of the distinction between a demand by an investigator for a specified class of records to be produced at a later date and a forensic search and seizure that proceeds in the nature of a search warrant.

iii. *Feasibility of Obtaining a Warrant*

1. **Feasibility:** where it is feasible to obtain prior authorization, then such authorization is a **precondition** for a valid search and seizure.

- a. **Application:** The regulatory regime is not undermined or made inefficient or inexpedient by a **warrant** requirement. Further, the LSBC is able to obtain a court order under s. 37 of the *LPA* on an “*ex parte*” and “without notice” basis to obtain such an order with evidence under oath.

iv. *Usefulness of a Warrant*

1. **Purpose:** purpose requires a means of *preventing* unjustified searches before they happen, not simply of determining, whether they ought to have occurred in the first place. A system of *prior authorization*, not one of **subsequent validation**.
2. **Frequency:** the lack of frequency is a factor.

- a. **Reasonable and probable grounds:** According to the LSBC, “The Chair **must** be satisfied that a lawyer or former lawyer *may* have committed a discipline violation, and his or her belief **must** be **reasonably grounded**” (see: Defendants’ NOA filed in S-1410056 on February 3, 2015).

d. Impugned Rules: Disjunctive breaches of s. 8

413. There are thirteen (13) disjunctive ways that the **Impugned Rules** violate s. 8 of the *Charter*:

- a. **absence of prior judicial authorization:** they authorize the LSBC to conduct a search or seizure without a system of prior judicial authorization;
- b. **dependent and partial arbiter for the SSO:** they authorize the LSBC to be **empowered** to enter **private** premises, search and/or seize by the administrative order of a non-neutral and partial arbiter;
- c. **nemo judex in sua causa:** they authorize the **Discipline Committee** to be an appellate tribunal of its underlying **ASSO** to stop or delay the suspension for failure or refusal to comply. This is particularly true since it is a rule of administrative law that all internal remedies of the administrative scheme **must** be exhausted first. The appellate decision of the DC, if so triggered by “special circumstances”, is not a decision of a panel under section 22 (3) or 38 (5), (6), (6.1) or (7). Further, since the LSBC has constructed panels as follows, “Each panel includes one Benchers, one lawyer who is not a Benchers and one public representative who is not a lawyer” so the decision of the **Discipline Committee**, as appellate tribunal or review board, is not one that can be reviewed under s. 47 or appealed under s. 48 of the *LPA*. It is all the more troubling and **unconstitutional** if the standard of review to the decision of the **Discipline Committee** in refusing to stop the suspension is reasonableness.

- a. New dex in sua causa: The Latin term for the second limb of the rules of natural **justice** or procedural fairness whereby the potentially biased are disqualified from participation: “No one ought to be a judge in his or her own cause.”
- d. **absence of evidence under oath**: they authorize said dependent and partial arbiter to be persuaded by the legal opinion of his or her solicitor **absent** reasonable grounds, and/or evidence established under oath, and/or believe a member may have committed an offence (not has committed);
- e. **absence of reasonable grounds**: they authorize the not entirely neutral arbiter to not be satisfied that the applicant has reasonable grounds to believe that something which will afford evidence of the particular offence under investigation will be recovered;
- f. **strictly relevant**: they authorize said dependent arbiter, who is a client of his or her solicitor applicant, to authorize a search and then seizure of records which are not all strictly relevant to the alleged offence under investigation;
- g. **ASSO – unreviewable**: they authorize the LSBC to grant internal search and/ seizure authorizations, warrants and/or orders which are unreviewable and/or unreviewable before the surrender to the search and/or physical seizure of records (personal, privileged or irrelevant);
- h. **Suspension Order – lack of meaningful review**: they authorize a suspension of the member for a “failure” or “refusal” to comply with an ASSO. The scope and availability of review is part of the analysis under s. 8. A member’s ability to challenge the suspension result is critical to the reasonableness of the LSBC Rules regime. Here, the process for review of the member suspension for refusal to comply with the ASSO, whatever that means, **only** permits the LSBCDC to consider whether the member has shown “special circumstances” in its application. The absence of meaningful review of the “failure” or “refusal” to comply with the ASSO, in light of the admitted LSBC practice to obtain such a wide sweeping ASSO and execution therefrom, raises concerns about the reasonableness of the LSBC Rules scheme. **Absent** such review, a member could find herself facing serious administrative sanctions without the precondition for the sanctions being met, and without any mechanism for redress. The serious consequences of a member being “suspended” indefinitely, combined with an inability to challenge the basis on which these consequences are imposed, render the LSBC ASS scheme unreasonable.
- i. **seizure of privilege records without meeting *Chambre* test**: they authorize the LSBC to force the member to consent to a seizure of records which are “confidential or subject to a solicitor client privilege” without notice to the member and/or the client or the lawyer of the member;
- j. **reverse onus**: they authorize the LSBC to create a reverse onus upon the member, who then has the burden to seek exclusions of already seized documents that are to be searched;

- k. **specific warrant for technological devices:** they authorize the LSBC to search technological data without a specific **warrant** for that search after the forensic seizure;
- l. **transfer to law enforcement:** they authorize the LSBC to threaten the member with an immediate suspension from the practice of law if he or she does not consent to the search of one's **private** property and immediate forensic seizure of records with the apparent discretion to pass on the information from those seized records for criminal law enforcement; or
- m. **return or destruction of seized records:** they authorize the search of **private** property and seizure of records with a focus on protections after the search and seizure with vague and amorphous language about the return or destruction of the seized records.

Section 9 and 10 of the *Charter*

414. There are few values more important to the individual in a free society such as Canada than the right not to be unlawfully arrested and detained. The arrest occurs at the time a person is placed under arrest. In the area of torts, the tort of false arrest is subsumed in the tort of false imprisonment. It is made out when one is prevented from going where one has a lawful right to be where there was no reasonable alternative. False imprisonment can occur with physical force, threat of force or psychological coercion. The apparent **authority** to detain and requests that another person remain to answer questions, it is reasonable to assume that an ordinary person would feel compelled to comply and remain.

415. In regards to *imprisonment*, the Alberta Court of Queen's Bench wrote, in *Chopra*, at ¶94

"Imprisonment is defined as the detention of a person contrary to his will, the restraint of a person's personal liberty, coercion exercised upon a person to prevent the free exercise of his powers of locomotion. It may take place without the actual application of any physical agencies of restraint, such as locks or bars, as by verbal compulsion and the display of available force. Every confinement of the person is an imprisonment, whether it be in a prison, in a **private** home, or even by forcibly detaining one in the public streets, any unlawful exercise or show of force by which a person is compelled to remain where he does not wish to be."

416. There is no Canadian **authority** as to whether the person **must** be conscious of his imprisonment at the time. *Meering v. Graham White Aviation* stated that an individual can be falsely imprisoned while you are asleep and that is as much an attack on your dignity as

if you were aware of it at the time (Wilson likes this approach, particularly for small children who may not understand the concept)

417. There is **no set time** for which the imprisonment **must** last as it could be momentary depending on the circumstances. The word “**false**” is misleading as the plaintiff is required **only** to prove a **direct imprisonment**. The Plaintiff carries the burden of showing that his or her actions were neither intentional nor negligent, or that some other defence is available. The **mistake of fact** is not a defence as if the defendant locked or closed the door to a room with individuals inside the defendant does not intend the specific consequences.

418. The **Impugned Rules** and the procedure thereunder do not meet any of those safeguards.

419. The other safeguards that would need to be in place would be that there would need to a separate **warrant** to search through forensically seized records (see: R. v. Vu). Further, there would need to a restrictive procedural safeguard that the LSBC was not entitled to pass on information to law enforcement that was seized during this process (see: R. v. Cole).

Section 1

420. In light of the above, the LSBC has not and will not be able to present any argument as to why these infringements should be saved under s. 1

JRPA PETITION: QUASHING THE SSO AND CONSEQUENTIAL RELIEF

421. If some or all of the **Impugned Sections** are **unconstitutional**, this matter is at an end. If some or all of the **Impugned Rules** are **unconstitutional**, this matter is at an end. If the LSBC is unable to point to a specific statute that authorizes all of its conduct during the **SSO** Proceeding, then this JRPA Proceeding is at an end as there are no damages in judicial review proceedings. Further, the **only** remaining issue would be damages and costs in the

Damages Action and MP Action. To the extent that there is anything remaining in the JRPA Petition and/or this Honourable Court wishes to deal with the issues despite their mootness, then they can be disposed of rather rudimentarily.

422. As pleaded by the Respondent in the Amended Response to Civil Claim, “The LSBC chose to conduct its investigation under the Law Society Rules through the Rule 443 order as a **fair, effective, and economical alternative** to a **court application** under s. 37 of the *Legal Profession Act* or otherwise.” The Rule 4-43 Order is an apparent alternative to an adjudicative process; not an investigatory process.

423. In an application filed by Respondent on February 3, 2015 under S-1410056:

The following points are not in dispute:

- (a) The Law Society is subject to the *Charter* by virtue of *Charter*, s 32;
- (b) the provision made under the Law Society Rules including Rule 4-43 for the investigation of member records is **different** than the provision made, under the Criminal Code, for the issuance of a search warrant.

The application of the *Charter* in the context of a well regulated activity, such as the practice of law, **is different than it is in the criminal context**. A reasonable regulatory scheme giving rise to civil consequences **may be substantially more intrusive** than would be justified in a criminal context.

424. The LSBC submitted, “In brief, Mr. Bussanich delivered **unsworn** material to the Mr. Riddell, who reviewed and made the order without giving reasons. It was an *ex parte* application. Mr. Riddell applied the following test: did he *reasonably believe* that a lawyer or former lawyer *may have committed* a discipline violation. He did not direct that the materials he had reviewed be provided or contemporaneous with the order.” In relation to the evidence under oath requirement, the LSBC submitted that it is an “unnecessary formality”.

425. Mark Bussanich, staff lawyer at the LSBC, swore that his **only** conduct in relation to Mr. McLean was in his investigative capacity. It was false and misleading as Mr. McLean could not review many of the documents between Mark Bussanich and the **ADMs** as they were protected by “solicitor-client privilege”. Simply put, Mark Bussanich perjured himself with the assistance of counsel for the LSBC in NST LLP so his true relationship with the **COD** would be before the Honourable Court.

426. The **ADMs** wore evidence that his **only** involvement with Mr. McLean was the granting of the **SSO**. This was false as he had been issued citations in relation to Mr. McLean and cited him for failure to comply with his **SSO**. Simply put, the **COD** perjured himself so he would not be forced to be discovered on the uncontroverted fact that the **COD** has significant investigative and prosecutorial functions but then acts in adjudicative capacity with respect to the **ASSO’S** and certainly did in relation to Mr.

McLean.

427. This fraud upon the court was further bolstered by the LSBC’s application to summarily dismiss Mr. McLean’s challenge to Rule 4-43 and the **SSO** by filing an application and signed by NST LLP:

[24] The constitutional validity of Rule 4-43 is now raised in the three actions. It should be struck (in all three actions) if it is plain and obvious on the pleadings that the claim cannot succeed.

Rule 4-43 has the following elements:

- a It contemplates an investigation authorized by the Chair of the **Discipline Committee**, that is, a Benchler who is a senior lawyer **independent of staff** who **must** assess whether the investigation should take place according to a test set out in the Rule;
- b The Chair of the **Discipline Committee** **must** be satisfied that a lawyer or former lawyer may have committed a discipline violation, and his or her belief **must** be reasonably grounded;

428. A solicitor-client relationship between the staff lawyer and the **COD** is the antithesis of independence.
429. After 18 months of the LSBC failing and refusing to produce any of the underlying documents for inspection, Mr. McLean obtained orders for the same. He is obviously the first to ever to do so in BC and it appears in Canada in this regime. The failure to produce by the LSBC was blatant as Mr. McLean continued to make requests for said application materials and a copy of the complaint. It became patently obvious why the LSBC refused to produce the documents as it uncovered the opaque and secretive administrative search and seizure process.
430. While representing to the court that this process was a fair and economic alternative to the s. 37, the application was titled “PRIVILEGED AND CONFIDENTIAL”. Mark Bussanich failed to present any side of the argument for Mr. McLean and entered into casual emails with the **ADM** along with non-relevant facts such as driving records. It clearly proceeded ex parte and without notice to Mr. McLean. There was no oral hearing and nothing was transcribed but rather it amounted to an email and phone hearing without any notes of the phone calls.
431. It is trite that the **SSO** entitled the LSBC to enter Mr. McLean’s **private** property at his office and home with three investigators (non-lawyers) bestowed with **authority** to force their way, at any time suitable to him and without warning and search for and seize documents or things that they may lay their hands on with the benefit of modern forensic seizure technology. It is trite that **SSO** proceedings, which is now being judicially reviewed after finally receive the record of the proceeding, are **quasi-criminal** in nature.
432. *Hunter* is the default test and apropos when the proceedings are **quasi-criminal** in nature. The **SSO** fails every requirement of the *Hunter* test. The Chair of the **Discipline**

Committee is not an entirely neutral arbiter. The LSBC's position on evidence under oath is that it is an "unnecessary formality". The **ADM** admits that he granted the **SSO** on reasonable belief; not reasonable grounds. The LSBC Forensic Seizure Paper states there are no words of limitation in this process. The LSBC took it a step further and admitted in a factum to the Court of Appeal that where they go to seize is not based on location but the type of document.

433. To add to the breaches, the **ADM** does not issue any Reasons (informal or formal; oral or written) for the **SSO**. The reasonless **SSO** is the result of a solicitor-client relationship between applicant and ADM. To say that there is a reasonable apprehension of bias and a lack of independence would be understating it.
434. Clearly, the **SSO** is highly intrusive as it is a right to enter property and records (privileged and irrelevant). The stigma of such an execution of an **SSO** carries an enormous stigma. The feasibility of a **warrant** is right under s. 37 of the *LPA* but the failure of the LSBC to do so is grounded in that the legal tests are different, evidence under oath is required, and the applicant is not entitled to give legal advice to an Honorable Supreme Court **Justice**. The utility of a **warrant** is most apropos when one considers the privacy interest at stakes of not **only** the member but other "persons".
435. While Mr. McLean had launched a Notice of Civil Claim for damages, the LSBC proceeded with its regulatory onslaught of him by seeking to find that he had committed professional misconduct by refusing to allow the LSBC into his home for a forensic seizure.
436. Since s. 38 requires that a panel issue reasons after the hearing the issue arises as to whether, on statutory interpretation principles, the **Discipline Committee** is required to issue reasons after granting an **ASSO**.

437. The LSBC **COD** 's practice is admitted that the **SSO** are “reasonless”. Further, it is admitted that LSBC **COD** does not direct as part of the **ASSO** that the member receives the underlying application materials. For context and as noted in the “Chronology”, the LSBC refuses to provide the underlying materials despite a request for the same at the time of request or any time thereafter. It is patently obvious that the **only** way to obtain the underlying materials from the LSBC is to sue the LSBC and the individuals involved in an Action, then utilize the discovery process under SCCR 7 to obtain evidence and documents. In the Damages Action, it took 18 months.

438. The LSBC **COD** 's practice is to never issue any form of Reasons and deny the member the underlying materials in spite of a request for the same, the member is unable to determine whether to judicial review.

439. To Mr. **Justice** Grauer’s remark and obiter that Mr. McLean would have judicially reviewed the order, it was a misstatement of law. As the foremost jurist in this area in Mr. **Justice** Stratas, if the bases underlying the decision are withheld, a party cannot assess whether the bases give rise to a ground for review (see: VAAA). In the context of a search and seizure order, the issue is less about whether a member can judicially review but whether he or she can prevent the seizure before it occurs as stated in *Thomson*:

“It is not necessary to formulate a general rule as to what constitutes a seizure; it is sufficient to say that the s. 8 prohibition does not encompass an order requiring the production of documents so long as the section authorizing the order (or the law apart from that section) gives the person required to produce a reasonable opportunity to dispute the order and prevent the surrender of the documents. That in my view is precisely the position under s. 17.”

440. Although the legal rule for what constitutes a seizure is now well settled, the principle as to whether the member has a reasonable opportunity to dispute the

order and prevent the search and seizure before it transpires is apropos. Mr. McLean had less than no opportunity in that the investigators had swarmed and taken over his office **absent** his permission and consent while Mark Bussanich threatened him via email that he was required to immediately attend back to his office and immediately consent to the forensic seizure of his technological devices. There was no ability for Mr. McLean to dispute the **SSO** but rather he was **only** able to challenge the LSBC as to which records they could further search in some undisclosed location. There is no ability to prevent the surrender of the forensic search and seizure short of violating the law and losing one's license and livelihood.

441. *If the LSBC has a duty to protect the public and the apparent records were so crucial to their legislative mandate, then why did it not attend court under its legislative right to do so under s. 37?*

442. Instead, it was simply better to hang Mr. McLean in public shame and obtain a finding that his failure to cooperate with the **SSO** was grave. With that segue, the “nail in the coffin” for the LSBC is that in order to obtain such a wide sweeping license to roam and seize inside Mr. McLean's home, a five judge Court of Appeal panel unanimously found in *Arkinstall* that all of the above factors mean that the *Hunter* standard is employed.

443. The LSBC failed on every ground of the conjunctive *Hunter* test:

- i. **unconstitutional system of prior authorization:** there was no system of prior authorization by an entirely neutral and impartial arbiter who was capable of acting judicially;
- ii. **unconstitutional arbiter:** the LSBC **COD** was not entirely neutral and impartial arbiter who was capable of acting judicially when it granted the **SSO** due, *inter alia*, to his extensive investigative and prosecutorial functions as **COD** , while issuing of citations in relation to Mr. McLean,

coupled with being in a solicitor-client relationship with Mark Bussanich and the very application being “Privileged and Confidential”;

- iii. **unconstitutional application materials:** the LSBC, as applicant, failed to swear evidence under oath in support of the **SSO**. Instead, it tendered an “privileged and confidential legal opinion” and gave legal advice to the arbiter who in turn was a client of the applicant LSBC;
- iv. **unconstitutional legal test:** the partial and dependent arbiter failed to satisfy himself that Mark Bussanich of the LSBC had reasonable grounds to believe that something which will afford evidence of the particular offence under investigation will be recovered. Instead, the LSBC obtained the **SSO** on the lesser standard of reasonable belief that misconduct may have been committed as opposed to having been committed; and
- v. **unconstitutional limitless seizure:** as admitted by the LSBC, the seizure of records is “without limitations” with the alleged “protection” coming post-seizure.

444. The **SSO** authorized a non-geographically confined entry into the **private** property of Mr. McLean along with a limitless seizure of his clients’ privileged records and his privileged records with no reasonable opportunity to challenge the **SSO** prior to the surprise execution under the, *inter alia*, penalty of an indefinite suspension of his license to practice law. The LSBC places reliance on various subpoena *duces tecum* cases (i.e. Branch) for the proposition that the **SSO** is constitutional.

445. The Respondent puts forward three cases for its position that the **SSO** is not unreasonable:

R v McKinlay Transport Ltd., [1990] 1 SCR 627 at [9]-[13]

British Columbia Securities Commission v Branch [1995] 2 SCR 3 at [49]-[64]

Greene v Law Society of British Columbia, 2005 BCSC 390

446. *Branch* is addressed *supra* and the Respondent appears to have not understood the binding finding of law that it was a seizure. The reason it was found not to be

unreasonable was addressed above due to the minimal intrusiveness as the very specific fact that an investigation order, which was found to be a seizure at law, came with no intrusion into an office or home.

447. *McKinlay* continues to make the point of a seizure at law and how the courts look to intrusiveness. If anything, it provides support for the *Charter* breach of the Petitioner.

448. *Greene* is of no import to this case as the Petitioner has had practice reviews conducted by the Respondent and there is no challenge to practice reviews in this case. Again, the Respondent continues to submit cases that are not factually similar and do not provide assistance to the court on the issues before it.

449. It is important to distinguish between an administrative order that authorizes a subpoena duces tecum and an ASSO as so eloquently written by the SCC in Thomson:

“It is evident that the essential characteristic of the situation created by a search and seizure order (and clearly the **only** one that explains the reaction of both judges) is that a public officer is there bestowed with **authority** to force his way, at any time suitable to him and without warning, into the home or business premises of a person and search for and seize documents or things that he may lay his hands on. Such a characteristic is absolutely **alien** to the situation resulting from the service of a *subpoena duces tecum*, whatever the nature and the number of the documents asked for. The two situations have nothing in common as regards the intrusion into the home and privacy of an individual. The necessity to protect the citizens and their homes against a possible abuse of search powers in no way compares with the need that might be felt of keeping some control over the issuance of *subpoena duces tecum*”.

450. The authorized order in Branch was upheld by the SCC as the British Columbia Securities Commission was able to rebut the presumption by pointing to a specific statute that authorized the seizure. Further, the regulatory order merely compelled directors of a public company to attend before an administrative tribunal with a specified class of documents at a hearing date as witnesses. The SCC found the law to be reasonable for the following reasons while citing the above authorities:

At page 443, the Court adopted the following statement from the reasons of Wilson J. *McKinlay Transport, supra*, at pp. 649-50:

In my opinion, s. 231(3) provides the least intrusive means by which effective monitoring of compliance with the *Income Tax Act* can be effected. **It involves no invasion of a taxpayer's home or business premises.** It simply calls for the production of records which may be relevant to the filing of an income tax return.

451. Clearly, the **SSO** involves highly intrusive invasions and forensic seizure of limitless records.
452. The more contemporary case of *Mulgrew* and involving the same legislation post 2012 was masterfully disposed of by The Honourable Mr. **Justice** Butler. In finding that the challenged order therein (being the second SPO which did not compel the seizure of a privileged records of Mr. *Mulgrew*), he found as follows:

[91] As I have found, the petitioners' reasonable expectation of privacy in these circumstances is attenuated. In addition, the provisions in s. 26(4) are not unreasonable in relation to the object and intent of the legislation. Further, the seizure required by a production order issued to a third party, including the SPO issued to the petitioners, is not intrusive. The context of the issuance of a production order under s. 26(4) is far removed from the realm of criminal or **quasi-criminal** law. Here, the two production orders have no criminal or **quasi-criminal** aspects. The petitioners face no

jeopardy, but are merely compelled as witnesses to the investigation of a complaint by the Law Society.

In summary, the subpoena powers in question are reasonable and properly constrained by the requirement that they be used solely to obtain information relevant to a duly authorized investigation into specified professional misconduct

Further, the issuance of the SPO does not violate the s. 8 Charter rights of the petitioners.

453. The **SSO** in the case at bar violates, inter alia, s. 8 of the *Charter* for the very opposite reasons that the SPO did not violate s. 8 as follows:
- i. Mr. McLean's REOP was not attenuated at his **private** office and/or home, and not in relation to privileged records under such a surprise attack **absent** any notice and potential to prevent surrender of said records under forensic seizure;
 - ii. The **SSO** is directed at him as a member and his law corporation with the consequences for failure to comply being suspension along with a bevy of other sanctions and threats therein. The **SSO** Proceeding is **quasicriminal**, at least, and potentially criminal;
 - iii. The **SSO** is not constrained in relation to specified professional misconduct but rather a license to roam and seize whatever the LSBC can get its hands and technologically advanced seizure equipment.
454. Simply put, the SPO in *Mulgrew* and the **SSO** in McLean are completely **alien** to each other.
455. To squarely address the third leg of the Collins test, "that the manner in which the searches and/or seizures was carried out was reasonable", the LSBC carried it out in the most heinous and egregious of fashions in light of its admission that consent is required.
456. The authorized search **must** not exceed its scope as to area and the authorized seizure **must** not exceed its scope as to the items for which the law has granted the

authority to search. To the extent the ostensibly authorized search and/or seizure exceeds these limits, it is not authorized by law.

457. The obvious issue as it relates to “area” is that the **SSO** authorized entry into:

- i. **private** office of Mr. McLean;
- ii. principal residence of Mr. McLean;
- iii. the home of the *Chartered* Accountant retained by Mr. McLean;
- iv. the office of a lawyer that was practicing in a **SSO** ciation with Mr. McLean; and
- v. any other geographical locations.

458. The obvious issue as it relates to the “items” is that the **SSO** authorized seizure of the following:

- i. “other evidence regardless of form;
- ii. privileged records of Mr. McLean’s clients’
- iii. privileged records wherein Mr. McLean was the client of lawyers;
- iv. technological devices such as computers and mobile devices;
- v. personal technological devices; and
- vi. limitless capture of records on computer devices by way of forensic seizure.

459. It is crucial to be cognizant that an **ASSO** itself is a search and seizure order notwithstanding the member’s refusal to consent. The impact on the privacy is the same.

460. The **SSO** remains valid today which is particularly apposite in light of the LSBC being successful on appeal in relation to injunctive relief pertaining to the **SSO**.

461. The **SSO** fails egregiously in relation to the requirements to seize records and the entirety of data from a computer hard drive and other technological devices.

462. Further, it fails miserably in relation to the requirements to search and seize record which are privileged between Mr. McLean and his clients. It fails even more egregiously with respect to the **SSO** granting **authority** to the LSBC to seize records which are the privilege of the member.
463. When measuring the **SSO** against the applicable legal principles, it fails miserably to meet the constitutional requirements for an entry into **private** property of the office and home of Mr. McLean. Even to the extent that the **SSO** was deemed valid due to the alleged “protection” for the member being able to apply to restrain the LSBC from searching further through the entirety of the hard drive and technological devices **absent** a separate warrant, the highly intrusive without notice surprise entry into the **private** property of member cannot be sanitized.
464. Against this backdrop of the immediate and indefinite suspension from practice of law, the **SSO** violates s. 8 of the *Charter* and clearly cannot be saved under s.8
465. To the extent that it could be found that the LSBC could point to a specific statute to authorize the **SSO** Proceeding, the *LPA* and the **Impugned Rules** are reasonable, and the **SSO** is properly limited to the areas and records to which the law has granted **authority**, the question remains whether the LSBC breached Mr. McLean’s *Charter* rights.
466. The LSBC admits that consent is required for the **SSO**. Two dates are important in that June 3 and June 4, 2014. This can be easily disposed of in relation to June 3, 2014. It is imperative to remember that the **SSO** itself is a search and seizure at law so the issue is upon service of it upon Mr. McLean on June 3, 2014 at ten a.m., whether it was reasonable considering that it **empowered** the LSBC to enter the **private** office and home of Mr. Mclean for forensic seizure.
467. The LSBC identified the issue as whether what the LSBC investigators did on June 3, 2014 constituted a seizure and whether a third party consented to their entry. The **SSO** is the search and seizure in that it compelled Mr. McLean to return immediately to

his office for immediate cooperation with all that the **SSO** authorized in terms of search into his **private** office and home and seizure of limitless records. The issue is whether that is a breach of his *Charter* rights. It is unequivocally a breach of his *Charter* rights but **only** relevant if such an analysis is required.

468. Further, third parties cannot waive *Charter* rights for other individuals so whatever alleged waiver by a third party that the LSBC is asserting is of no consequence at law.
469. The conduct of the LSBC in continuing to enter the office of Mr. McLean and refusing to leave despite knowing they should not remain goes to aggravated and punitive damages; not whether there was a breach of *Charter* rights.
470. With respect to the issue of the June 4, 2014 purported consent by Mr. McLean in the face of a day of threats and onslaught by the LSBC can be again disposed of simply.
471. The LSBC fails to meet the six conjunctive requirements for a voluntary consent by Mr. McLean. Further, under the **Impugned Rules**, it is technically impossible for a consent to be voluntary as the member is being threatened with loss of livelihood for a failure or refusal to comply. To add insult to injury, the member is not advised of his right to withdraw or refuse consent. Further, although the attachment to the **SSO** states
that the member should seek retain counsel, the LSBC is demanding immediate cooperation contemporaneously under the most severe sanctions.
472. As noted, consent, when involving *Charter* rights, is to be narrowly construed. Moreover, a consent for one purpose is not valid for another.

LSBC Incorrect Position and Irrelevant Authorities

Unsworn Evidence

473. Section 37 of the *Legal Profession Act* is instructive in this regard. Based on the **SSO**, the Respondent has the alleged power to seize “other records”, “wherever located”, then it would follow that if this was a fair alternative, then an application would be supported by evidence under oath. The **SSO** did grant the Respondent the alleged power to search and seize third parties in the Petitioner and Kevin A. McLean Law Corporation, Peter Stojakovic, and Gary Lo. The **SSO** has more power and less safeguards than any conceivable order under s. 37 of the *Legal Profession Act* and to the extent that it would **only** be fair that evidence would be in the same form as the *Legal Profession Act* required under oath or affirmation. Ironically, Mark Bussanich and Eva Milz have easily and frequently **sworn** evidence under oath in court proceedings but were not willing to do so when the Petitioner’s *Charter* rights were at issue. The Respondent’s position put forward is that it was an “unnecessary formality”.

474. The LSBC failed to cite any **authority** for the meritless position that evidence for the **SSO** is an “unnecessary formality”.

Absence of Notice

475. The Respondent cites four cases in support of that the Petitioner and other members not being entitled to notice:

Strauts v College of Physicians and Surgeons of British Columbia, (1997) 36 BCLR (3d) 106 (CA) at [5]-[7], [Strauts]

Kennedy v Law Society of Newfoundland, 2005 NLTD 112 at [18]- [40], [47] [Kennedy]

Puar v ASSOCIATION of Professional Engineers and Geoscientists, 2009 BCCA 487 at [18]-[24] [Puar]

D 'Mello v Law Society of Upper Canada, 2015 ONSC 5841 (Div Ct) at [69] [D'Mello]

476. *Strauts* involved the College of Physician and Surgeons of BC investigating the doctor for his use of chelation therapy. In that case, there was a serious issue relating to chelation therapy and its detriments to those that used it in relation to that controversial therapy. The investigation was not very limited and focused as it should be but the Court did referencing binding appellate **authority** of *Bishop*. *Strauts* further stood for the following position at paragraph 26:

Given the College's position that it will **not** base any **future prosecution** of Dr. Strauts on non-compliance with 92- 73, I conclude that there was no requirement that the College give notice to Dr. Strauts before passing the resolution.

477. The corollary of that position is that a regulator basing future prosecution on noncompliance means that some form of notice is required. The Respondent's case is in the

Petitioner's favour.

478. *Kennedy* involved a member making some rather incendiary, offensive and defamatory comments about judges in front of some Wildlife Officers. The allegation was forwarded to the member in August 2013, a reply was sought in September 2013 and then in January 2014 the parties were mutually informed that an investigation would take place. Counsel for the member argued that the failure of the Law Society to attempt to obtain the full CBC recording, with subpoena power available to it, left crucial evidence unavailable to the Plaintiff which would have placed his comments in the context necessary to assess whether the comments warranted sanction; and left him exposed to having to recreate that context on his own through viva voce evidence in the hearing with

the frailties inherent in that process. However, the importance of the decision in as it relates to this case at bar:

[47] Given that the Law Society did **not** have determinative powers affecting a right or interest of the Plaintiff in process at this stage and the apparent early closure in that process of factual content issues, I incline to the general tendency of the Courts away from intervention.

479. The opposite is the case in the SSO Proceeding. Under the germane Law Society Rule, failure to comply with the **Impugned Rules** and SSO will lead to an **immediate indefinite suspension and there is no assurance to the member that he or she will ever be returning to practice**. Specific to this case, the Law Society used the failure of the Petitioner to comply to its satisfaction in an interim suspension hearing. Further, it then further fined him and sanctioned him for failing to comply and then used it as a “part and parcel” to disbar him as **“UNGOVERNABLE”**. The correct legal test is what is “at stake” and that is an “immediate indefinite suspension” of the member, and further indefinite, semi-permanent and permanent sanctions which are viewable to the public.

This is yet another case that supports the Petitioner’s orders sought.

480. *D’Mello* is beyond distinguishable but provides some important points for this case:

[73] Mr. D’Mello did **not** take any steps to stay the investigation nor to obtain a ruling on his entitlement to disclosure.

481. **The Petitioner absolutely did by way of requests and by way of court order in relation to disclosure.** When no requests were forthcoming, he sued in Supreme Court of British Columbia and sought document disclosure. He finally obtained document disclosure from the Respondent in an order of Mr. **Justice** Bowden in November 2015. The Respondent stonewalled the Petitioner in relation to the basis, particulars and Reasons (if there were any) for the SSO, and then refused to provide any of the underlying documents. The Petitioner continued to make demands upon the Respondent for documents but it took its own misguided interpretation of document production in a civil proceeding but were the very documents that the Petitioner was seeking from the

Respondent that related to the SSO. Even worse, the Respondent refused to even comply with it’s the LSBC Rules by providing him with a copy of the complaint (see: LSBC Rule 3-5(3)). The continued investigation under the SSO is still ongoing and the Petitioner seeks to stay that and obtain injunctive relief in that regard.

482. *Puar* is another case that assists the Petitioner. The investigation in said case was very narrowly focused upon a specific file. Further, Puar issue stemmed from his issue with a “Notice of Inquiry” being published on ASSOciation’s website regarding said inquiry. **Mr. Puar’s concern did not lie in his ability to ultimately respond to the allegation against him being in any way impaired. It lies in the fact the Notice of Inquiry was published.**

483. The publishing of a notice on a website and an order **empowering** investigators to conduct a limitless seizure into the office, personal phone and principal residence are entirely distinct.

484. Further, the seminal quote from Lord Denning:

In recent years we have had to consider the procedure of many bodies who are required to make an investigation and form an opinion. ... In all these cases it has been held that the investigating body is under a duty to act fairly; but that which fairness requires depends on the nature of the investigation and the consequences which it may have on persons affected by it. The fundamental rule is that, if a person may be subjected to pains or penalties, or be exposed to prosecution or proceedings, or deprived of remedies or redress, or in some such way adversely affected by the investigation and report, then he should be told the case made against him and be afforded a fair opportunity of answering it.

485. Further, the corollary of the *Puar* decision is that if a member is not entitled to disclosure before, he or she is certainly entitled to the underlying materials reasonably thereafter and certainly **upon request**. The LSBC deliberately refused to provide the Petitioner with the bases, particulars, underlying materials and Reasons for the decision despite a request for the same. The Petitioner respectfully submits this was yet another breach of procedural fairness.

*Derogation of Petitioner’s natural **justice** rights - LSBC’s six useless points*

486. The LSBC raises **six points** that provide little guidance on why it subjectively felt it could derogate the Petitioner’s natural **justice** rights and discharge its heavy duty of procedural fairness in the circumstances:

i. **Failure to provide notice - (LSBC's position):** Notice in advance would **undermine** the LSBC's ability to investigate transactions that defaulting lawyers would prefer to keep hidden;

1. Petitioner's reply: this is inconsistent with the SCC **authority** of preventing unauthorized seizures before they happen and not subsequent validation;

ii. **Failure to exhaust alternative measures - (LSBC's position) :**

The application in this case was preceded by requests and discussions with the petitioner in the context of the compliance audit begun in the spring of 2013 and still not completed due to the petitioner's failure to provide information; the petitioner was naturally aware of all this;

1. **Petitioner's Reply:**

a. In the case at bar, the Petitioner's *Chartered Accountant* was providing monthly trust reconciliations of the law corporation to the LSBC from the time of full reinstatement;

b. The Respondent fully investigated and all issues relating to accounting and fully reinstated the Petitioner into the practice of law on January 29, 2014;

c. As deposed by Ms. Milz, the issue **only** related to "trust accounting" which does not even relate to the Petitioner but a law corporation which is a separate entity in fact and at law; and

d. The LSBC has confused "proceedings".

iv. **SSO – (LSBC's position):** A referral by the Trust Assurance Department to the Professional Conduct Department and the request for the Rule 4-43 order signalled the initiation of a formal investigation that was 'embryonic in form' engaging the **gathering of raw material for further investigation'** (Kennedy v Law Society of Newfoundland, *supra*, at [37], quoting Irvine v Restrictive Trade Practices Commission, [1987] 1 SCR

1. **Petitioner's reply:**

a. the **SSO** is a search and seizure order into the home and office of member for forensic seizure under severe consequences which means that it **must** comply with the *Hunter* requirements. It fails on every requirement;

v. **Opaque process – (LSBC's Position):** The order and conduct of the investigation based on the order were **private**;

1. Petitioner's reply:

a. The **SSO** was granted ex parte, without evidence, and without record or minutes so "**private**" is an inappropriate diction;

- v. **Consequences of failure to consent to SSO (LSBC's Position):** The petitioner's ability to practice law and professional conduct record were unaffected by the order;

1. Petitioner's Reply:

- a. This is not the correct test under this heading as the test is not what happened but what is at stake and it is common ground that it is an immediate and indefinite suspension;
- b. In any event, this is incorrect as the Respondent takes over an office for a full day and then it **must** seize a hard drive which takes further days;
- c. Mr. McCartney deposed that he and other investigators knew that the Petitioner did not want there and he did not consent to them being in his office;
- d. Results from the **SSO** are then used at an interim suspension hearing;

- vi. **What is "at stake" (LSBC's Position:** In the event that the investigators concluded that the petitioner should be cited for professional misconduct or a breach of the Law Society Rules, and the **Discipline Committee** agreed, a formal discipline process would then be engaged with extensive procedural protections to ensure fairness including prehearing disclosure, the appointment of a hearing panel to hear evidence under oath, tested by cross-examination.

1. Petitioner's Reply:

- a. The Respondent misses the point that the failure to consent to the **SSO** means that a member loses their livelihood through the "Indefinite Immediate Suspension". This is the most severe immediate sanction that a member can face besides permanent disbarment is the indefinite suspension that can **only** be lifted once the Executive Director is satisfied to their satisfaction. Further, it was going to be used against him in a pending interim suspension hearing which amounts to an effective disbar;
- b. The test is well settled and it is not what happened to the member but what is "at stake". When the member reads the Law Society Rules, the member realizes that the failure to comply results in immediate suspension. *Kane v. Board of Governors of the University of British Columbia*, [1980] S.C.R. 1105, where a university professor was facing disciplinary suspension the Supreme Court stated as follows, at p. 1113:

A high standard of **justice** is required when the right to

continue in one's profession or employment is **at stake**. A **disciplinary suspension** *can* have grave and **permanent consequences** upon a professional career.

- c. The further problem is that the hearing panels are composed often with members of the very LSBCDC that is involved in the investigative and prosecutorial functions. They are able to fulfill these various roles, which is a breach of the members' guaranteed and protected rights, as a direct **authority** under ss. 36(a).

Reasonable Apprehension of Bias and Independence

487. The LSBC forth two cases to demonstrate that there was no reasonable of apprehension of bias and independence:

DeMaria v Law Society of Saskatchewan, 2015 SKCA 106 at [23][25],[46]-[50]

Ocean Port Hotel Ltd. v. British Columbia (General Manager, Liquor Control and Licensing Branch), 2001 SCC 52 at [42]-[43]

488. The allegation of bias in *DeMaria* was in the nature of fraternization and *DeMaria* was incredibly weak on the evidentiary component of showing fraternization. The Petitioner's allegation is far stronger than some incidental and cordial fraternization between counsel and a decision maker. The Petitioner is not making an allegation but relying on the Respondent's own documents and uncontroverted evidence that there was an extensive and lengthy solicitor-client relationship between the applicant seeking the Draconian seizure order and the **ADM** granting such an order in that adjudicative process. Further, the fact (not allegation) that the very application itself was "PRIVILEGED AND CONFIDENTIAL". From an objective standpoint, a reasonable person could perceive bias when the applicant, who is making the application, is acting in his capacity as solicitor to his client but that client is the very tribunal granting the decision, and the solicitor-client relationship continued thereafter.

489. The issue in *Ocean Port* centred around whether members of the Liquor Appeal Board are sufficiently independent to render decisions on violations of the Act and impose the penalties it provides. More specifically, it held that the tenure enjoyed by Board members – appointed “at the pleasure” of the executive to serve on a part-time basis – was insufficiently secure to preserve the appearance of their independence.
490. This is not even the realm of the Petitioner’s argument on independence. The Petitioner is not challenging that portion of the legislation in relation to the appointment of benchers but the uncontroverted fact that an extensive and deep solicitor-client relationship at all relevant times before and after the SSO Proceeding but during it and application themselves being “Privileged and Confidential”. Moreover, the Petitioner is directly challenging subsection 36(a) which is a measure against the *Charter*.
491. An important principle comes out of this case as well, “The appellant, with the support of the intervening Attorneys General, argues that this reasoning disregards a fundamental principle of law: **absent a constitutional challenge**, a statutory regime prevails over common law principles of natural **justice**.”
492. More importantly, there is a very extensive constitutional challenge to the legislation under the *Legal Profession Act* with requisite Notice of Constitutional Question being served on the various parties.
493. **Again, this is precisely why the statutory regime must be challenged first.**
494. While the Supreme Court of Canada found in *Green*, “The right to practise law is not a common law right or a property right, but a statutory right that depends on the principles set out in the Act and the rules made by the Law Society” the right to be free from an unreasonable search or seizure is a *Charter* right along with the constitutionalization of the privilege. Additionally, there are many other *Charter*

rights at issue with the **Impugned Rules** and the **SSO** along with the s. 7 of the *Charter* challenges.

495. There is a challenge to subsection 36(a) in how it breaches the guaranteed and protected rights of the members under the entire Part 4 – Discipline.
496. In any event, the controlling authorities require an entirely neutral arbiter who is capable of acting judicially in the context of authorizing a search and seizure (see: *Hunter*). This applies to sections 36 and 37 of the *LPA*.
497. In relation to s. 38, the citation hearings are clearly adjudicative in nature. There **must** be no reasonable apprehension of bias in said context. The JRPA Petition is focused on the **SSO** and consequential relief but it is why the **Impugned Sections** of the *LPA* **must** be challenged first as they confer the power to limit the rights of the member in the various regards under Part 4 – Discipline.
498. In relation to s. 39 of the *LPA*, this is clearly the right to practice law of those who have completed all of the onerous requirements to become lawyers.

Absence of Procedural Safeguards Seen in Anton Piller Orders or Orders under s. 37 of the *LPA*

499. The LSBC “The procedural safeguards in court proceedings for the seizure of documents are not a yardstick by which the fairness of the Rule 4-43 process for the commencement of an investigation can be measured.”
500. It is improper to label as the Rule 4-43 process as it relies on the attachment and, by its very nature, all relevant LSBC Rules as found by the Honourable Madam **Justice Gerow** found under 2015 BCSC 1431 at the following at paragraph 89 which the Respondent did **not** appeal:

[89] The attachment to the order indicates that Rules 3-5(6) and 3-5(6.1) of the *Law Society Rules* apply. **In my view, Rule 3-5.01(1) is also relevant.**

501. The LSBC's position appears to be that it has not used this **unconstitutional** punitive provision against any members to date but that is not the issue in law. It goes to much more than whether it has been used but whether it amounts to a threat, which is conceded by the LSBC, and whether said threat vitiates consent necessarily. Further, the issues are different in the JRPA Petition and LSBC Rules Petition. To borrow a line from the SCC in *Hunter*, "At the outset it is important to note that the issue in this appeal concerns the constitutional validity of a statute authorizing a search and seizure. It does not concern the reasonableness or otherwise of the manner in which the appellants carried out their statutory **authority**. It is not the conduct of the appellants, but rather the legislation under which they acted, to which attention **must** be directed."
502. Clearly, this Consolidated Brief addresses both but the challenge to the *LPA* **must** addressed first. What will remain thereafter is speculation.
503. The Respondent puts forward four positions as it relates to a court order under s. 37 **going beyond (whatever that means in fact or at law)** the rule itself:
- (a) Is made by the court rather than an administrative officer;
 - (e) Authorizes the seizure of records rather than an investigation;
 - (f) May be directed to persons other than the lawyer in question, such as a financial institution for the seizure of a lawyer's bank records;
 - (g) Is enforceable by contempt proceedings.
504. This flies in the face of the pleadings in that the Respondent pleaded that the **SSO** is a "fair and economical alternative" to s. 37 of the *LPA*. It is not disputed that is

economically advantageous to the Respondent. The primary issue is whether the **SSO** is constitutional when measured against the *Charter*. From an administrative law perspective, the issue is whether it is a fair alternative to s. 37 for the member.

505. The major distinction is that a **justice** of the British Columbia Supreme Court has absolute immunity for its adjudicative decisions whereas the **ADM** has immunity for his adjudicative decision in granting the **SSO** under the *ATA*, s. 56. In both cases, the decision by a Supreme Court **Justice** or the **ADM** are adjudicative decisions but the order made by the **ADM** is far more intrusive than any order by a Supreme Court **justice**. The **SSO** only contains a few of the 30 safeguards as the PD Model 31. As found by the SCC in *Hunter*, “This means that while the person considering the prior authorization need not be a judge, he **must** nevertheless, at a minimum, be capable of acting judicially. *inter alia*, he **must** not be someone charged with investigative or prosecutorial functions under the relevant statutory scheme. The significant investigatory functions bestowed upon the Restrictive Trade Practices Commission and its members by the Act vitiated a member’s ability to act in a judicial capacity in authorizing a s. 10(3) search and seizure and do not accord with the neutrality and detachment necessary to balance the interests involved.”

506. The LSBC continues to misunderstand the law in our province and Canada of search and seizure at law. Alternatively, the LSBC knew that admitting in *Mulgrew*. It is unclear why it refused to admit such a position but that shall arise in document production for the jury trial in the Damages Action. Certainly, if someone like Deborah Armour instructed their law firm to take inconsistent position, the knowledge of doing so is a ground for special costs and punitive damages. The same applies to the refusal of Mark Bussanich to disclose the information in support of the **SSO**.

507. The law in our province remains settled as a result of *Branch* and *Bishop*. The

LSBC has forcefully pleaded the *Branch* does not advance the Petitioner's claim. It not **only** advances the Petitioner's argument regarding the settled law of seizure but demonstrates the distinction between a reasonable seizure and an unreasonable one. The case history and binding findings of law are reproduced below:

Branch at British Columbia Supreme Court

508. The question whether a forced production of documents constitutes a "seizure", within the meaning of s.8 of the *Charter*, has produced a wealth of **authority**, some of it conflicting. In this province I am bound to follow two decisions of this Court, both of which applied the decision of the Alberta Court of Appeal in the Alberta Human Rights Commission case, and concluded that a forced production of documents in a civil proceeding, or during an administrative inquiry, **is a seizure**.

See: *Bishop v. College of*

Physicians and Surgeons of British Columbia (1985), 1985 CanLII 569 (BC SC), 65 B.C.L.R. 315, and *College of Physicians and Surgeons of British Columbia v. Bishop* (1989), 1989 CanLII 2674 (BC SC), 34 B.C.L.R. (2d) 175. The SCC Canada correctly stated his finding of law: "He also concluded that the seizure authorized by s. 128(1)(c) of the *Securities Act* is not "unreasonable" within the meaning of s. 8." Finally, Wood J. considered whether s. 128(1)(c) of the *Securities Act* authorizes an unreasonable search or seizure contrary to s. 8 of the *Charter*. He considered himself bound by British Columbia **authority** to find that s. 128(1)(c) authorizes a "seizure": *Bishop v. College of Physicians & Surgeons of British Columbia* (1985), 1985 CanLII 569 (BC SC), 22 D.L.R. (4th) 185 (B.C.S.C.), and *College of Physicians & Surgeons of British Columbia v. Bishop* (1989), 1989 CanLII 2674 (BC SC).

Branch at the BCCA

509. On this aspect, I mean that Mr. **Justice Wood correctly held himself bound by authority** to find that the requirement of production is a "**seizure**". The Supreme Court of

Canada further reinforced the position of our British Columbia Court of Appeal, “But she [Madam **Justice** Southin] held that Wood J. was correct to state that he was bound to find a seizure, and she concluded that if, in fact, a seizure was authorized, it was, "as both Mr. **Justice** La Forest and Madam **Justice** L'Heureux-Dubé held [in *Thomson Newspapers*], reasonable".

Branch at SCC

510. Of equal importance is the nature of the **seizure** authorized by the *Securities Act*. The demand for the production of documents contained in the **summonses** is one of the least intrusive of the possible methods which might be employed to obtain documentary evidence (see: para 60). The importance of this distinction was stressed in *Baron v. Canada*, 1993 CanLII 154 (SCC), [1993] 1 S.C.R. 416. At page 443, the Court adopted the following statement from the reasons of Wilson J. *McKinlay Transport, supra*, at pp. 64950:

vii. In my opinion, s. 231(3) provides the least intrusive means by which effective monitoring of compliance with the *Income Tax Act* can be effected. **It involves no invasion of a taxpayer's home or business premises.** It simply calls for the production of records which may be relevant to the **filing of an income tax return.**

511. Since the Supreme Court of Canada found that the demand for documents upon witnesses by way of summonses to attend a hearing is a seizure, then it follows that the order granted by the **ADM** was an **ASSO**.

512. Since it is not a warrant, it amounts to the authorization of a **warrantless** search and seizure with the LSBC bearing the heavy burden of demonstrating the reasonableness of the search and seizure.

513. The **SSO** was directed at directed at other persons beside the Petitioner so this argument is simple false. The LSBC has pleaded that Rule 4-43 is authorized by s. 26. Section 26 of the *Legal Profession Act* entitles the LSBC to enforce by contempt proceedings.

514. Based on the facts and binding authorities, the four points put forward by the LSBC are entirely unpersuasive that s. 37 goes beyond the “rule”. Rather, it demonstrates that the **SSO** is a search seizure that is obtained with less “checks” and “balances”, more intrusive in scope and duration than a s. 37 or Anton Piller Order, and far more penal to the member. The issue is whether the **SSO** is constitutional when measured against the *Charter*.

Quashing Order Solely under Administrative Law Principles

515. As found by the SCC, “The common law duty of procedural fairness applies **only** to a specific decision made by the Law Society that affects a lawyer’s interests.” Clearly, a **SSO** is a decision made by the LSBC that affects a lawyer’s interests.

516. The court **cannot give deference** to the choice of a tribunal **whether to give reasons** as the **court must ensure** that the **tribunal** complies with its legal obligation (see: *Clifford v. Ontario Municipal Employees Retirement System*, 2009 ONCA 670). When there is no apparent rationale for the decision, the reasoning process falls short of the required standard. **Deference** is not owed to the decision and intervention is permissible (see: *Guttman v. Law Society of Manitoba*, 2010 MBCA 66). On the duty to give reasons as a corollary of the duty of fairness, see *N.W. Utilities v. Edm. (City)* 1978 CanLII 17 (SCC), [1979] 1 S.C.R. 684, 705-06, 23 N.R. 565, 7 Alta. L.R. (2d) 370, 38586; *Sanderson v. Crim. Inj. Rev. Bd.*, 2010 ABCA 167 (CanLII), 487 A.R. 244 (para. 11); *Baker v. Min. of Cit. & Imm.* 1999 CanLII 699 (SCC), [1999] 2 S.C.R. 817, 848, 243 N.R. 22, 174 D.L.R. (4th) 193 (para. 43); *Law Socy. of U.C. v. Neinstein*, 2010 ONCA 193 (CanLII), 259 O.A.C. 313, 1 Admin. L.R. (5th) 1, 15-16 (paras. 6062); *Guttman v. Law. Socy. of Man.*, 2010 MBCA 66 (CanLII), [2010] 8 W.W.R. 385, 397, 255 Man. R. (2d) 151 (para. 57).

517. If a tribunal refuses or neglects to issues any reasons, **deference** is not showed. As the **ADM** failed to provide reasons, be they formal or informal, written or oral, the **deference** doctrine does not come into play. As to the duty to provide reasons: see generally *T.L.M. v. Department of Social Development (formerly the Minister of Family and Community Services)*, 2009 NBCA 8 (CanLII), 341 N.B.R. (2d) 33; *Guttman v. Law Society of Manitoba*, 2010 MBCA 66(CanLII), [2010] M.J. No. 198 (QL); *Kalin v. Ontario College of Teachers*, 2005 CanLII 18286 (ON SCDC), [2005] O.J. No. 2097 (QL), *Vancouver v. Picadilly Investments Ltd.*, 2010 BCSC 245 (CanLII), [2010] B.C.J. No. 328 (QL); *R. v. R.E.M.*, 2008 SCC 51 (CanLII), [2008] 3 S.C.R. 3.

518. It might be tempting to extend **deference** to the **SSO** by seeing whether this Honourable Court can think of its own reason to reach the same conclusion which the **ADM** did. However, that would be but **superficial deference**. It would not follow the alleged expertise of a tribunal; it would substitute the court's own views, usurping the **ADM's** work. And it might encourage future tribunals to give no reasons, gambling that some lawyer or court would later find or invent reasons.

519. The controlling authorities are clear and unambiguous that when there are no reasons, there is no **deference**. It is a question that the courts examine under the correctness standard as, *inter alia*, it subsumes issues of procedural fairness and natural **justice**. It is for this Honourable Court to determine the correctness of the **SSO**. However, it would **fail** under the most deferential standard of reasonableness. Therefore, it automatically fails under the least deferential test of correctness.

520. To the extent that administrative principles come into play, the LSBC fails miserably in that regard which are independent grounds for the setting aside of the **SSO**:

- c. Mark Bussanich fails to make full, frank disclosure and present both sides of the argument to his client **ADM**(see: *S.J. v. S.D.*;);
- d. **SSO absent** Reasons (see: *Baker*; *Vancouver International Airport Authority*; *Regal Ideas et al*);
- e. **ADM's** losing jurisdiction by failing to issue written reasons (see: *Boyle*);
- f. **ADM's** acting under the principle of dictation of his lawyer Mark Bussanich (see: *Spackman and Roncarelli*);

- g. Denial of a right to a fair hearing to the member (see: *Cardinal*);
- h. Conflicts of interests and lack of independence (see: *Golden Valley*)
- i. Breaches of procedural fairness (see: *Knight*; and *Cardinal*)
- j. Breaches of natural **justice** rights (see: *Newfoundland Telephone Co.*)
- k. Reasonable Apprehension of Bias (see: *Newfoundland Telephone Co.*)
- l. Breach of LSBC Rules in failing to deliver the complaint (see: LSBC Rule 3-5 (3) at is then was); and
- m. Breach of LSBC Rules in proceeding with a search and seizure despite **only** recourse being suspension (see: LSBC Rule 3-5.01).

521. In the context of the **SSO** against Mr. McLean, the LSBC was required to meet the following:

- i. a system of prior authorization for the **SSO**, by an entirely neutral and impartial arbiter who is capable of acting judicially in balancing the interests of the State against those of the individual;
- ii. a requirement that the impartial arbiter **must** satisfy himself that the applicant LSBC seeking the authorization has reasonable grounds, established upon oath, to believe that an offence has been committed;
- iii. a requirement that the **only** documents which are authorized to be seized are those which are strictly relevant to the offence under investigation
- iv. transcribed hearing;
- v. tailored order to the circumstances;
- vi. independent supervising solicitor appointed;
- vii. officer of the court attends for search and seizure;
- viii. object receives underlying application materials and information upon which the **SSO** was based;
- ix. independent supervising solicitor safeguards solicitor-client privilege;
- x. two-hour period to consult counsel;
- xi. two hours to gather privileged documents;
- xii. list making requirement imposed upon LSBC;
- xiii. independent party holding seized documents;
- xiv. seized records **only** used for the purpose of said matter;
- xv. object has right to vary the order before the arbiter;
- xvi. object has the right to discharge the order before the arbiter;
- xvii. object has the right to seek directions;
- xviii. object has the right to seek a stay; and
- xix. LSBC meets test for voluntary and informed consent of member.

522. It failed to meet any of those procedural, natural **justice** and constitutional requirements, and as such, the **SSO must** be set aside along with the return and/or destruction of all seized records.

523. Simply put, the LSBC is incorrect on every legal issue which is frightening considering they are entrusted, on some levels, of protecting the public.

DENOUEMENT

Warrantless Searches

524. **Warrantless** searches and seizures are *prima facie* unreasonable.
525. In the absence of prior judicial authorization, the government or governmental body **must** meet all three requirements:
- a. the governmental body conducting the search **must** be able to point to a **specific statute** or common law rule that authorizes the search;
 - i. If they cannot do so, the search cannot be said to be authorized by law;
 - b. the search **must** be carried out in accordance with the procedural and substantive requirements the law provides;
 - i. A failure to meet either of the above requirements will result in a search which has not been authorized by law.
 - c. the scope of the search is limited to the area and to those items for which the law has granted the **authority** to search. To the extent that a search exceeds these limits, it is not authorized by law.

Part One: Authorized by Law

526. *Simply put, is the LSBC able to point to a specific statute or common law rule for the **SSO** involving Mr. McLean and/or the **ASSOs** they are executing generally?*
527. Under the first part of the test, this is why the LSBC has gone to such great lengths to argue that its conduct was authorized by the *LPA*. However, the *LPA* did not authorize a single Chair of the **Discipline Committee** to grant such authorizations

but rather the **Discipline Committee**. Subsection 36(b) and (d) certainly authorizes searches and seizures based on reasonable belief and no requirement of evidence whereas section

37 requires evidence under oath and the test is “reasonable and probable grounds”. The AGBC’s position is that the LSBC is not precluded from doing more with its Rules and its conduct. The position has merit when analyzing subsection 36(c) and (d) as that is general in nature with respect to an “examination” which is also a search and seizure of records. The focus of Madam **Justice** Gerow and Mr. **Justice** Grauer found the LSBC was authorized to pass Rule 4-55 and grant orders thereunder. For sake of convenience, she found:

“[82] In my opinion, the language of Rule 4-43 does **not appear** to grant powers to the Law Society beyond what the *Legal Profession Act* allows, as was the case in *Gardner*. Section 36 of the *Legal Profession Act* provides that the benchers may make rules to establish a **Discipline Committee**, **delegate authority** to the committee, and authorize an investigation and examination of the books, records and accounts of a lawyer if there is *reason to believe* that the lawyer *may* have committed any misconduct, conduct unbecoming a lawyer or a breach of the Act or the rules. Rule 4-43 provides that the chair of the **Discipline Committee** can order an investigation of the books and records, including electronic records, of a lawyer if he reasonably believes the lawyer or former lawyer may have committed a discipline violation. As noted, s. 29 of the *Interpretation Act* provides that in an enactment, such as the *Legal Profession Act*, the term “record” includes books, letters, papers and anything on which information is stored whether graphic, electronic or otherwise.

528. Mr. **Justice** Grauer also found:

“The **authority** of the Law Society to grant an investigation order under Rule 4-43, pursuant to section 36 of the *Legal Profession Act*, seems clear.”

529. This is actually why the AGBC's point about *Slaight* is correct in that the LSBC cannot make **unconstitutional** rules absent the LSBC being granted a discretion to do so. There is nothing under the *LPA* that entitled the LSBC to pass such an absurdly unreasonable punitive provision wherein the **Discipline Committee** is passing judgment on its own order as to whether the member has complied with the **SSO**. As such, it cannot be said that the LSBC is able to point to a specific statute for the search and seizure that it executes. Since the punitive provision is clearly part of the LSBC **SSO** Proceedings

530. As noted in the seminal jurisprudence in *Attorney-General for Alberta v. AttorneyGeneral for Canada*, [1947] A.C. 503, at p. 518:

The real question is whether what remains is so inextricably bound up with the part declared invalid that what remains cannot independently survive or, as it has sometimes been put, whether on a fair review of the whole matter it can be assumed that the legislature would have enacted what survives without enacting the part that is ultra vires at all.

531. Certainly, the striking down of Rule 3-6 would move **SSO** Proceedings in a more a constitutional direction but the outstanding constitutional defects remain.

532. This is a full answer to the AGBC's position that subsections 36(a), (b) and (d) are merely general in nature. Where **Madam Justice Gerow** was slightly analytically imprecise is that the *LPA* does not authorize an "examination" on reasonable belief and **absent** evidence under oath but it does authorize an "investigation" on reasonable belief of a discipline violation and absence evidence under oath. However, it is a distinction without a difference in that section 36(d) is interconnected with the ss. 36(b) in that a requirement to produce is a seizure and where a person can compel a requirement to produce, it entitles that person to "make copies".

533. The LSBC was correct in this regard that the power to make copies entitles it to enter to make said copies much like the facts in the *Bishop*. The LSBC's position that it was not a "sensible reading of the statute" that it could investigate the records and not make a copy is analytically sound when reading s. 27(7) of the IA. The issue is not whether the LSBC can apply internally for an ASSO but what requirement **must** it meet in order for such an order to be granted.
534. The LSBC admits that there is no evidence under oath in its applications to obtain such ASSO. It is clear that it is **only** on the standard of reasonable belief that a discipline violation *may* have occurred. It is uncontroverted that the COD is adjudicating upon these applications in the form of reviewing the Privileged and Confidential Application,

2nd Branch: Procedural and Substantive Requirements

535. The issue is not whether the LSBC can conduct regulatory search and seizure proceedings upon members but what requirements does the LSBC need to meet procedurally and substantively. Certainly, an order from a statutory body requires cooperation and it is not that the LSBC cannot compel members to do certain things but what **must** they do during the course of that mandated compliance.
536. The SCC in *Hunter* clearly found that the s. 8 focus must be in preventing unjustified searches and seizures before they occur and not with "hindsight bias":

If the issue to be resolved in assessing the constitutionality of searches under s. 10 were in fact the governmental interest in carrying out a given search outweighed that of the individual in resisting the governmental intrusion upon his privacy, then it would be appropriate to determine the balance of the competing interests after the search had been conducted. Such a *post facto* analysis would, however, be seriously at odds with the purpose of s. 8. That purpose is, as I have said, to protect individuals from unjustified

state intrusions upon their privacy. That purpose requires a means of preventing unjustified searches before they happen, not simply of determining, after the fact, whether they ought to have occurred in the first place. This, in my view, can only be accomplished by a system of prior authorization, not one of subsequent validation

3rd Branch: Geographical Ambit of the Search and “Record Ambit of the Search

537. What Madam **Justice** Gerow found in first instance was actually correct, which should not have been set aside but was for not the correct procedure, in that:

[89] The attachment to the order indicates that Rules 3-5(6) and 35(6.1) of the *Law Society Rules* apply. In my view, Rule 3-5.01(1) is also relevant.

[91] The fact that s. 36 of the Law Society Act and Rule 4-43 authorizes an investigation of a member’s books, records and accounts, does not in my view, allow the Law Society to enter into a member’s residence, or seize his personal phone, or suspend him for failing to comply with a request for those items

538. If such an **SSO** is authorized by the law, then the law itself is most unreasonable. To practice law is a privilege; not a right. However, Canadians seek to obtain that privilege to “practice law” and have a right to practice subject to certain requirements.

539. There is no dispute that lawyers **must** be subject to regulation with practice reviews, investigations, and audits of their books along with *Chartered* Accountants approving their books and documents. There is no dispute that when there is a complaint, the veracity and validity of said complaints needs to be determined and, if necessary, it needs to be investigated.

540. The issue in this four-year stanza between Mr. McLean, the member found to be “ungovernable” and the Government is how members and persons are to be investigated and examined. At the crux of this hard fought litigation is s.8 of the *Charter*. It is the right of all Canadians to be free from unreasonable search **or** seizure. Along the way, legislation **must** be analyzed and s. 7 and principles of fundamental **justice** arise in the context of where sections of the *LPA* and LSBC Rules are “vague”, “arbitrary”, “overbroad” or “grossly disproportionate. Sections 9 and 10 factor into the extent that the member is arbitrarily compelled and

541. To suggest that this has been a war between Mr. McLean and the various parties would be a litigation understatement. Bad blood has arisen on all sides. Allegations of assault and battery have come to the forefront along with entries into **private** office without consent of the member.

542. In return, the LSBC has been converting regulatory fines into judgments and obtain stays for payment of costs along with orders of vexatious litigant tactics. To that end, Mr. McLean is fine with the monikers but he is not a fraud but the LSBC has displayed fraudulent conduct along with inconsistent allegations between pleadings of two cases of *Mulgrew* and McLean.

543. Instead of facing the law so it could be heard on its merits for the benefit of the public, the LSBC cowardly seeks to stay matters. That is not in the public interest. The real issue is that it has become so intensely competitive that

544. What is important to remember is that 2018 is not 2012 as we live in a modern world of technology. Computers and cell phones that are used for personal purposes, regardless of where they are found or to whom they belong, “contain the details of our financial, medical, and personal situations” (see: *Morelli*, at para. 105). This is particularly the case where, as here, the computer is used to browse the internet, store personal data, personal emails, information not related to law, and a cyber-storage system that has been uploaded onto the desktop without password protection (see:

Morelli). Internet-connected devices “reveal our specific interests, likes, and propensities, recording in the browsing history and cache files the information we seek out and read, watch, or listen to on the Internet” (see: *Morelli*). This sort of **private** information falls at the very heart of the “biographical core” protected by s. 8 of the *Charter*. For example, if the thing searched or seized contains personal and **private** information, such as medical records, love letters or income tax returns (all of which have often been called “**core biographical data**”), that particular item might be afforded greater protection than, say, a criminal record check.

545. However, few things remain more in stone than solicitor-client privilege and privacy in **private** property.

546. In order to be reasonable, searches and seizures **must** be authorized by law. The reason for this requirement is clear: under both the *Charter* and the common law, agents of the state **can only enter onto or confiscate someone’s property when the law specifically permits them to do so**. Otherwise, they are constrained by the **same rules regarding trespass and theft as everyone else**.

547. The **Impugned Rules**, when read in conjunction, **fail miserably** when measured against the *Charter*; particularly s. 8 of the *Charter*:

- i. they are not, when read in connection, authorized by a specific statute or common law rule;
- ii. to the extent all of the **Impugned Rules** are authorized by a specific statute, they do not contain the procedural and substantive safeguards required by law for such searches and seizures to be carried out; and
- iii. to the extent that the **Impugned Rules** do not contain the necessary procedural and substantive safeguards required for such searches and seizures, the ambit (geography and types of records) is unlimited. No such **authority** exists for the LSBC to pass such rules to conduct ASSO’s of member’s offices and homes for records “subject to solicitor-client

privilege” under the penalty of an immediate and indefinite suspension from the practice of law.

548. Not **only** does no **authority** exist, the LSBC, naturally, has not been able to point to such **authority**. In defence of such a position, it has cited Branch wherein a subpoena duces tecum was authorized by s. 128 of the Securities Act in relation to witnesses producing records or things at a later date at a hearing.

549. As noted by the SCC in Thomson, a subpoena duces tecum and an ASSO are completely **alien** to each other. In finding s. 26(4) of the LPA, without considering s. 88 (1.1 to 1.3), reasonable, The Honourable Mr. **Justice** Butler employed very similar reasoning to Branch.

550. The LSBC submitted the differences between Madam **Justice** Gerow on May 29, 2015 by way of comparison to s. 26 and s. 36 (see: PR, Tab 2).

551. The LSBC also submitted that Rule 4-55 differs from the Rule 3-5 (complaint driven process of s. 26 of the LPA)

552. The **only** authentic issue is whether certain sections of the LPA are inconsistent with the *Charter*.

LEGAL COUNSEL OBLIGATIONS AND COSTS

553. The law of costs and special costs is well settled in this province and country. Document production with respect to litigants and members in good standing with a law society is even more clear.

Binding Authorities

554. The repercussions of the LSBC abuse of process in this case were wide spread and of significant expense to the Appellant, who had marshalled all of the evidence. The LSBCs' narrow approach fails to recognize that his conduct was not confined to recent hearings, it went well beyond that (see: *Glover v. Leakey*, 2017 BCSC 1287, para, 45). The Appellant is over 8000 hours on this proceeding which he commenced as a full time practicing lawyer in good standing with the LSBC. The Appellant has exceeded \$150,000 in disbursements. Further, punitive damages can also be awarded for the misconduct that gave rise to the litigation (see: *Soleil*).
555. Although special costs are usually awarded in relation to misconduct during the litigation itself, there is ample **authority** for the proposition that such an award may be made where the pre-litigation conduct is reprehensible and warrants rebuke: *Nygard International Ltd. v. Robinson*, 1990 CanLII 1991 (BC CA), (1990), 46 B.C.L.R. (2d) 103 (C.A.); *Evergreen Building Ltd. v. IBI Leaseholds Ltd.*, 2009 BCCA 275 (CanLII), 2009 BCCA 275; *Sun Life Assurance Co. of Canada v. Ritchie*, 2000 BCCA 231 (CanLII), 2000 BCCA 231; *Dockside Brewing Co. v. Strata Plan LMS 3837*, 2007 BCCA 183 (CanLII), 2007 BCCA 183.
556. Unfounded allegation of fraud attract special costs see: *Albion Securities Co. v. Milne* - 1999_CARSWELLBC_2297.doc ; *Blackwell Stores Ltd. v. Okanagan-Similkameen (Regional District)*; and *O'Connell Electric Ltd. v. British Columbia Hydro & Power Authority*, , 2006 BCSC 1632.)
557. Continuing to allege fraud during the course of litigation, once it is clear the evidence will not support a finding of fraud will expose a party persisting in that allegation to an award of special costs. (*Dimitriadis v. Bowen Valley Ranch Corp.*, [1995] B.C.J. No. 2281 (S.C.) (QL); *131843 Canada Inc. v. Double "R" (Toronto) Ltd.* (1992), 7 C.P.C. (3d) 15 (Ont. Gen. Div.).

558. If the pleading had any merit in relation to the allegations of fraud, Mr. McLean would be criminally convicted and serving prison time. Clearly, they were meritless.
559. Special costs may be ordered for "reprehensible conduct giving rise to the litigation, particularly where the fruits of the litigation do not provide an appropriate compensation in relation to the reprehensible conduct" (see *Sun Life Assurance Co. of Canada v. Ritchie*, 2000 BCCA 231 (CanLII), (2000), 184 D.L.R. (4th) 635 (B.C.C.A.), at paragraph 54 (leave to appeal to S.C.C. refused, [2000] S.C.C.A. No. 247 (QL))).
560. There are a number of cases addressing special costs, notably, *Laface v. McWilliams*, 2005 BCSC 1766 (CanLII), 2005 BCSC 1766, in which Madam **Justice** Kirkpatrick awarded special costs for non-disclosure of documents, and *Romfo v. 1216393 Ontario Inc.*, 2007 BCSC 1772 (CanLII), 2007 BCSC 1772, in which Mr.

Justice Myers also awarded special costs for non-disclosure of documents.

561. The best case example of deceiving the courts and well written judgment is that of Madam **Justice** Dickson in *Le Soleil Hospitality Inc. v. Louie*, 2010 BCSC 1183, aff'd at the BCCA:

384] As a general rule, the type of misconduct that justifies an award of special costs will relate to the course of the litigation and not to prelitigation misconduct. This is so because reprehensible pre-litigation misconduct giving rise to a cause of action is typically addressed by an award of punitive damages. In some cases, however, reprehensible misconduct may have originated prior to litigation but continued throughout the litigation process. **In these circumstances, special costs may be ordered in addition to punitive damages without double punishment being imposed:** *Golden Capital Sec. Ltd.* at ¶ 161-176.

385] Perjury is reprehensible misconduct, as is fraud and conspiracy. Such misconduct cannot be condoned by the court. On the contrary, it should be denounced and deterred, both specifically and generally. For

these reasons, acts of perjury, fraud and conspiracy often attract an award of special costs. Such awards may be made on the basis of full indemnity: *Fullerton v. Matsqui (District)*, [1992] B.C.J. No. 2969 (C.A.) at ¶ 17; *Insurance Corporation of British Columbia v. Phung*, 2003 BCSC 1619 (CanLII) at ¶ 8 & 11.

Application of the Law to the Facts

562. The issue is whether the perjury by Mark Bussanich and Philip Riddell is reprehensible. It is clearly beyond reprehensible in light of their respective positions
563. The chronology and undisputed facts and evidence show a pattern of conduct that gave rise to the underlying proceedings which is deserving of special costs and punitive damages. The conduct by the LSBC, along with their law firm of choice, was to refuse to disclose the underlying documents prior to the Damages Action and throughout the proceeding along with missing discoveries with no reasonable excuse. Moreover, the LSBC, realizing its unlawful opaque process was to be exposed, sought to have Mr.

McLean's claim dismissed as follows by an application filed by the LSBC in February 03, 2015 submitting that the *Charter* challenge was bound to fail:

[24] The constitutional validity of Rule 4-43 is now raised in the three actions. It should be struck (in all three actions) if it is plain and obvious on the pleadings that the claim cannot succeed.

Rule 4-43 has the following elements:

It contemplates an investigation authorized by the Chair of the **Discipline Committee**, that is, a Bencher who is a senior lawyer independent of staff who **must** assess whether the investigation should take place according to a test set out in the Rule;

The Chair of the **Discipline Committee must** be satisfied that a lawyer or former lawyer may have committed a discipline violation, and his or her belief **must** be reasonably grounded;

564. As noted in detail *supra*, the **COD** was not **only** not independent of Mark Bussanich, staff lawyer, but he was taking legal advice from him on a general basis. The application seeking the order was “PRIVILEGED AND CONFIDENTIAL”.

The **COD**

ADM refused to allow the Plaintiff to inspect his documents as he claimed solicitor-client privilege between Mark Bussanich and himself.

565. Even worse, in an effort to remove himself from the proceedings on an individual party of record basis, he perjured himself as noted *supra*.

566. For ease of reference, the **COD** swore as follows:

“The granting of the Rule 4-43 Order in my capacity as Chair of the **Discipline Committee is the extent of my involvement** of any Law Society matter involving the Plaintiff.”

567. The Petitioner defeated his application and then had the right to examine under oath. Despite his missing of two examinations for discoveries, he finally attended and he gave the following evidence under oath:

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17 431 Q I'm asking -- I'm just asking off your memory. You
18 remember citing me for not complying with the Rule 19
4-43 order?

20 A I am trying to think. There are, to my 21
recollection, **three** citations, I think, that I 22
issued.

23 432 Q Involving me?

24 A Involving you.

25 433 Q Okay.

568. Mark Bussanich then swore that his duties were exclusively in his investigative capacity but then did not produce documents for inspection as he later claimed to be giving legal advice. Further, Mark Bussanich

569. It is rather scary to cogitate that Mark Bussanich is now a Crown Counsel after having quit his post at the LSBC. The more frightening aspect that underlies this fouryear litigation is that all it took was one lawyer to file a Notice of Civil Claim instead of a Petition and name individuals personally to start a domino effect of covers up and lies. It demonstrates why the LSBC wishes to **only** wishes to have these matters heard as judicial reviews as there is no right document production and discoveries therein.
570. In a hearing before Madam **Justice** Gerow, the LSBC again submitted that it was unclear whether a seizure took place on June 3, 2014 when the investigators were in Mr. McLean's office without his consent and presence. Again, the mere demand itself is a seizure so the service of the **SSO** upon Mr. McLean in the morning of June 3, 2014 completed the seizure at law.
571. It is rather disingenuous of the LSBC to continue to advance positions that they knew not to be true.
572. Clearly, the continued persistence that all that the **COD** and the **Impugned Rules** authorize is an investigation as opposed to a seizure when it is admitting that a mere demand on a third party non-lawyer for a specified class of documents be produced is a seizure in *Mulgrew* is reprehensible conduct.
573. Simply put, if the LSBC had admitted that a production order is a seizure and discharged its obligations to provide Mr. McLean with the underlying application materials for the **SSO**, the liability portion could have disposed in 2014 by way of Petition.
574. You then look to their meritless positions on the law taken by the LSBC which are in addition to the misleading and fraudulent misrepresentations to the Supreme Court of BC. In relation to LSBC Rules Petition, it is not even grasping the concept that it is a challenge to the **Impugned Rules**. It is focused on the **SSO**; not the

Impugned Rules. In relation to the JRPA Petition, it has not cited any **authority** that supports its position.

575. It was the deliberate withholding of the bases that protracted the litigation. With consistent legal positions between proceeding documents, the proceeding would have been focused on whether the **Impugned Rules** and **SSO** were **unconstitutional** and/or invalid for authorizing searches into homes and offices and seizures of privileged records **absent** evidence under oath in the context of privileged applications and solicitor-client relationships between applicants and tribunals.
576. It has often been said that “[n]owhere in civil procedure is the responsibility of the lawyer greater than in the area of discovery of documents”: *Boxer v. Reesor* (1983), 43 B.C.L.R. 352 (S.C.), per McEachern C.J.S.C. (citing Fraser & Horn, *The Conduct of Civil Litigation in British Columbia*). The “duty upon a solicitor is now, and has always been, to make full, fair and prompt discovery”: *Grossman v. Toronto General Hospital* (1983), 41 O.R. (2d) 457 (H.C.).
577. The LSBC then wished to compare the **SSO** Proceeding to that of the criminal search warrant. An interested party has a right to apply to set aside or quash a search warrant based on a defective information (*R. v. Solloway Mills & Co.*, 1930 CanLII 266 (AB CA), [1930] 3 D.L.R. 293 (Alta. S.C.)). This right can **only** be exercised *if* the applicant is entitled to inspect the warrant **and the information immediately** after it has been executed (see: *A. G. (Nova Scotia) v. MacIntyre*, [1982] 1 SCR 175).
578. In *Grossman supra*, in dismissing the hospital’s appeal from a decision of a master ordering production and full particulars of the documents for which privilege was claimed, Reid. J. stated at 462-63:

...The system is, in a sense, in the hands of the lawyers. The opportunity for stonewalling and improper concealment is there. Some solicitors grasp it. **They will make only such production as can be forced from them. That**

is bad practice. It can work real injustice. It causes delay and expense while the other side struggles to see that which they had right to see from the first. In such a contest the advantage is to the long purse. The worst consequence is that the strategy is sometimes successful, giving its perpetrators a disreputable advantage. **The practice must be condemned.** If it were widespread it would undermine the trial system.

579. The British Columbia Legislature must be faulted for their drafting of the *LPA* and significant amendments to the *LPA* by way of the Legal Profession Amendment Act 2012. The *LPA* scheme (ss. 36(a), (b), (d), (i)(i), 37.1, 42(1) and 88 (1.1) (1.2) infringes s. 8 of the *Charter* and must be declared to be **unconstitutional** insofar as it authorizes the LSBCDC to pass on the appropriateness of a proposed ASSO when it *reasonably believes* that a member *may* have committed “misconduct” which in turn bestows power upon the LSBC to force its way into the **private** property of a member to search and compel seizure of records which may be subject to a solicitor-client privilege with the “protection” coming post-seizure in relation to a return or destruction of said seized personal and irrelevant records. The Legislature must be faulted for this unconstitutional scheme as these **Impugned Sections** conferred an express power upon the LSBC, LSBCDC, benchers and panels *to limit* the guaranteed and protected rights of members and persons.
580. The live issue, which is academic in nature, is whether ss. 11(2) is also unconstitutional along with Rule 3-6 which is clearly **unconstitutional** for the litany of reasons espoused above. The issue is whether the LSBC or the Legislature is at fault for the constitutional failings in this challenged LSBC Rule. It clearly does not conform with the requirements under *LPA*, ss. 26.01. The issue is whether the discretionary section 1
581. To summarize, Rule 3-6(2) violate s. 8 of the *Charter* in that **Discipline Committee** is adjudicating, in its discretion, whether the suspended member, who has failed or refused to comply with the underlying ASSO it granted, and must show “special circumstances” to stop or halt the suspension. The scope and availability of review is part of the analysis under s. 8. The scope and availability of review, in light of the denial of both a legislative right of review under s. 47 and a right of appeal

under s. 48, is extremely narrow and non-existent for those who cannot demonstrate special circumstances.

582. Rule 3-6(1) violate s. 7 in that the member **is suspended** immediately and indefinitely for ‘failing’ or ‘refusing’ (whatever that connotes) to comply with an ASSO, which is not in accordance with the principles of fundamental **justice**, because the suspension flows from proof merely that the ASSO was granted, rather than the validity of such an order and/or the bases upon which it was made.
583. Rule 3-6(1) violate s. 7 in that the member **is suspended** immediately and indefinitely for failing to comply with an ASSO, which is not in accordance with the principles of fundamental **justice**, because the member **is suspended** irrespective of the triviality of such non-compliance and/or the justificatory reasons for failure or refusal to fully comply.
584. Rule 3-6(2) violate s. 7 of the *Charter* in that the member **is suspended** indefinitely for failure or refusal to comply with an administrative search and seizure authorization or order, which is not in accordance with the principles of fundamental **justice** because the member **is suspended** has complied to the subjective satisfaction of the Executive Director.
585. Rule 3-6(2) violate s. 7 of the *Charter* that the member **is suspended** immediately and indefinitely for failure or refusal to comply with an administrative search and seizure authorization or order, which is not in accordance with the principles of fundamental **justice**, as the member may **only** delay or halt the suspension order upon showing
“special circumstances.
586. Mr. McLean respectfully submits that is not for him to debate further whether the Legislature or the LSBC is at fault for Rule 3-6(1) and (2) but rather that is a debate to be had between the AGBC and LSBC. That being said, ss. 26.01 and s. 39 are

virtually identical and he respectfully submits that Rule 3-6, in a newly constituted form and rule, should mirror Rules 3-10 and 3-12 (see *supra* i.e. three or more benchers with not a member of DC, proceeding, transcribed, right to vary, etc). However, this dovetails with the **unconstitutionality** of the declaring ss. 36(a) being of no force and effect in that the DC should not have adjudicative **authority** under Part 4 Discipline particularly when it has such heavy investigative and prosecutorial functions. This is noted under s. 47 (3)

(3) Within 30 days after the decision of a panel under section 38 (4), (5), (6), (6.1) or (7), the **Discipline Committee** may refer the matter for a review on the record by a review board.

587. The legislation is expressly **empowering** the DC to engage in investigating, prosecuting, citing, and adjudicating on various matters as a “decision maker” for ASSOS and as tribunal panels for professional misconduct. When not satisfied with the decision of a hearing panel, which a member of the DC may have sat on, it may then refer the matter for review which a member of the DC may be sitting on to adjudicate on the decision of said hearing panel.

588. Mr. McLean’s respectful submission is that the s. 11(2) is overbroad, vague, and arbitrary and such a limitless power cannot be given to the LSBC benchers particularly in light of their conduct in this proceeding. The benchers, the LSBC, the LSBCDC and hearing panels cannot be given such power. It needs to be limited with requirements like there are under s. 26.01 for a suspension during investigation. With 11(2) declared of no force and effect, the benchers are still able to make rules for the governing of the society, lawyers, law firms, articulated students and applicants, and for the carrying out of this Act

and (3) The rules are binding on the society, lawyers, law firms, the benchers, articulated students. However, the passing of rules will be properly constrained as they are required to preserve and protect the rights and freedoms of all persons. Lawyers, who have been duly called, have a right to practice law and that right can only be stripped with certain standards in place along with having various rights of review which is a section 8 right. Moreover,

lawyers have various s. 7 rights in relation to the principles of fundamental **justice** *even if* their liberty is not at stake.

589. The Plaintiff respectfully submits that declaring s. 11(2) of no force and effect along with Rule 3-6 is the correct result. Without 11(2), the LSBC would not be able to rely on any section for the passing of Rule 3-6 and it would be required to comply with s.

26.01 for a suspension during an investigation.

590. The Legislature cannot obviously not be faulted for the conduct of the LSBC's counsel in failing to do the above or deliberately misleading the court.

591. Once retained, Nathanson Shcachter Thompson LLP had a positive duty to provide Mr. McLean with the underlying documents, Reasons, particulars and application materials for the **SSO**. It had a positive duty to counsel its client, the LSBC, to deliver what was requested.

592. Instead, it failed miserably to meets its obligations as lawyers and unnecessarily delayed the McLean Proceedings as a nefarious but effective tactic. As such, the LSBC must be liable for special costs for said conduct which can only be analyzed in a multiday costs hearing.

593. That being said, the counsel to the AGBC are in a rather difficult conundrum in that they have a duty to act to represent their client but the LSBC Rules require lawyers to act honestly and veraciously.

594. As officers of the court, they are required to promote **justice** and tell the truth. 595. Further, the defence of these Impugned Provisions is counter of the Barrister and Solicitors' Oath of the LSBC by the AGBC and counsel to the AGBC.

596. Ergo, the AGBC (and its counsel, agents and lawyers) are ethically and legally required to consent to the relief sought in substance.

597. Moreover, the Attorney General is a bencher (see: *LPA*, s. 4(1)).

598. The Attorney General is responsible for ensuring that public administration is conducted according to the law. Moreover, the website states:

“The Ministry of Attorney General often consults with British Columbians on legislation and policy. One method is to publish a discussion paper with an invitation to the public to respond.”

599. As it stands, the Impugned Provisions and the scheme of the *LPA* is such that public administration is **counter** to the law. The Plaintiff is not against open discussion with fellow British Columbians and this Consolidated Brief provides an outline for current and future debate. However, these matters are extremely urgent for members and persons in relation to their guaranteed and protected rights so the AGBC is required to immediately consent to the relief and jointly submit for the relief sought in relation to the **Impugned Sections** and Impugned Rules. To the extent that it does not, the public should not suffer in terms of tax payer dollars but rather the counsel who are involved in such

“legal advice” should be held personally liable for an order of special costs in order for this Honourable Court to disassociate itself with such conduct.

600. To the extent that the AGBC refuses to consent to the orders sought along with encouraging the redrafting of the various Impugned LSBC Rules, which have a litany of constitutional defects, then the Petitioner says that an order of special costs should be ordered against it. This is particularly true when members and persons are left exposed to their *Charter* rights being exposed by this obvious **unconstitutional** legislative scheme

and obscenely **unconstitutional** regulatory scheme. The AGBC has that power in acting for the Legislature and by virtue of being a benchers. The Petitioner submits forcefully that the AGBC has a positive duty to lead the redrafting of the Impugned Rules to make them compliant with the guaranteed and protected rights when they are so wildly inconsistent with the *Charter* rights.

PART IV: REMEDIES AND CONCLUSIONS

601. Mr. McLean seeks the orders contained in the *LPA* Petition, LSBC Rules Petition and JRPA Petition. In terms of sequence, the *LPA* Petition shall be heard first. The Petitioner reserves the right to seek costs against the AGBC depending on its response to this **Consolidated Brief** and invitation to work with the Petitioner on a joint submission that is in the public interest and protects the *Charter* rights of members and persons. It is the legislation that authorizing the Impugned Rules, but for possibly Rule 3-6, and the LSBC will continue to operate under those Impugned Rules until the parent legislation no longer authorizing such rules and subsequent conduct under the Impugned Rules. What will be left of the LSBC Rules Petition and/or JRPA Petition after the hearing of the *LPA* Petition is mere speculation. The only matter that is certain is that a determination needs to be made in relation the Impugned Sections of the *LPA*.

***LPA* Petition**

Subsection 36(a) of the LPA

602. Subsection 36(a) of the *LPA* infringes the Charter as it authorizes the LSBC to delegate any and all authority (but for rule-making which remains with the benchers) to the LSBCDC under Part 4 – Discipline.

603. The controlling authorities require an entirely neutral arbiter (need not be a Justice) who is capable of acting judicially in the context of authorizing a search and seizure. By

mandating that the LSBCDC have authority and responsibility under Part 4 (Discipline), it authorizes the LSBCDC to authorize a search and seizure of records and

“other evidence” of members. On this basis alone, any search and seizure granted and/or carried out under the authority of ss. 36(a) of the *LPA* is an unreasonable one.

604. The significant investigatory functions bestowed upon the LSBCDC and its members by the *LPA* vitiate a member’s ability to act in a judicial capacity in authorizing a search and seizure under the *LPA* and do not accord with the neutrality and detachment necessary to balance the interests involved.

S. 8 – Search or Seizure

605. Under s. 36, it is subsections (b), (c) and (d) that authorize a search and seizure of records and other evidence and require cooperation of the member during that process where the LSBC is entitled to make copies or extracts of those records and “other evidence”.

606. Under s. 37, it states that the LSBC may apply to the BCSC for a search and seizure warrant. There may be a conflict between subsection 36(a) and s. 37(1), (2), (3), and (5) in that the LSBC can delegate any and all authority to the LSBCDC (but rule making), so the issue arises as to whether the LSBC may not apply to the BSCB but the LSBCDC for such a search and seizure order. In any event, it is an example of poorly drafted and imprecise legislation which is yet another reason why subsection 36(a) should be declared of no force and effect.

607. Since the LSBCDC may be granted any and all authority under s. 38, this includes authority on a panel therein. As such, 41(2) is challenged wherein the panel may order a search and seizure of the applicant or respondent at any time before or during a hearing, produce all files and records that are in the possession of that person and that may be relevant to a matter under consideration.

608. A member of the LSBCDC passing on the appropriateness of a proposed search and seizure under the *LPA* is caught by the maxim *nemo judex in sua causa*. He or she simply **cannot** be the impartial arbiter necessary to grant an effective authorization.

Right to a fair hearing – s. 7 and 11(d) and/or s. 2 (e) of the Canadian Bill of Rights

609. In relation to s. 38, the citation hearings are clearly adjudicative in nature and involve the member's livelihood.
610. In relation to s. 39 of the *LPA*, a suspension hearing of a member is clearly adjudicative in nature so the member, again, has a right to a fair hearing. Further, this is clearly the right to practice law for those who have completed all of the onerous requirements to become lawyers.
611. There **must** be no reasonable apprehension of bias in said context. In authorizing the LSBCDC to have all authority under this section, members of the LSBCDC are empowered to adjudicate on panels. As such, a member of the LSBCDC, who adjudicates on a panel under s. 38 in relation to the conduct of the member, the potential sanction and associated costs, cannot be impartial and independent. Ergo, a member of the LSBCDC, who is one of the three or more benchers that may suspend a member under s. 39 of the *LPA*, is not able to be impartial and independent.
612. As such, subsection s. 36(a) of the *LPA* breaches ss. 7, 11(d) of the Charter or ss. 2 (e) of the Canadian Bill of Rights with respect to a member's right to a fair hearing.

Scheme

613. Even if subsection 36(a) does specify a truly neutral and detached arbiter to authorize searches and seizures, there are potentially more serious defects authorized by the *LPA*.

614. For the reasons noted , the administrative search and seizure scheme pursuant to subsections 36, (b), (d), (i), 37.1, and 88(1.1) (1.2) of *LPA* infringes s. 8 of the *Charter* and must be declared to be unconstitutional insofar as it authorizes the LSBCDC to authorize ASSOS absent evidence under oath by the applicant and upon reasonable belief that a member may have committed “misconduct” wherein the “person” must cooperate and produce records and “other evidence” even if they are subject to a solicitor-client privilege. Again, to read these Impugned Sections as simply allowing the authorizing party to satisfy itself on these questions, without requiring it to do so, would be clearly inadequate. Such an amorphous standard cannot provide a meaningful criterion for securing the right guaranteed by s. 8.
615. In relation to 42(1) of the *LPA*, said subsection infringes s. 8 of the *Charter* and must be declared to be unconstitutional insofar as it authorizes a member of the LSBC to authorize a search or seizure of an applicant or respondent records, before or during said hearing, that are in the possession of that person and that may be relevant to a matter under consideration. Again, to read ss. 42(1) as simply allowing the authorizing party to satisfy himself, herself or itself on these questions, without requiring them to do so, would be clearly inadequate. Such an amorphous standard cannot provide a meaningful criterion for securing the right guaranteed by s. 8.
616. Moreover, since ss. 88(1.1) (1.2), compels production of those records, subject to a solicitor-client privilege, the constitutional defects are plentiful as enumerated above particularly when considered in light of the recent jurisprudence.
617. The AGBC has not presented any persuasive argument as to why these infringements are saved under s. 1.
618. In the absence of any evidence to show that the objectives of the *LPA* would be frustrated by adherence to the *Hunter* criteria and/or the *Lavalee* and/or *Chambre* criteria, it is impossible to conclude that the s. 8 rights would be minimally impaired. Moreover, in the absence of any evidence to show how the *LPA* would be

frustrated by having impartial and independent panels, it is impossible to conclude that s. 7, 11 (d) rights of the Charter would be saved under s. 1 or depriving a s. 2 (e) right under the *Canadian Bill of Rights* in accordance with principles of fundamental justice.

619. The Court will not attempt to save the offending sections of the *LPA* by reading into it the appropriate minimum standards for issuing an ASSO and/or minimum standards with respect to seizing records subject to a solicitor-client privilege, or the minimum standards with respect to the right of a LSBC member to a fair hearing in the quasi-criminal context of a citation hearing or suspension. It should not fall to the courts to fill in the details necessary to render legislative lacunae constitutional.

LSBC Rules Petition

620. The Impugned Rules are unconstitutional for the reasons espoused supra yet there is no explicit or express power to pass Rule 3-6. Rule 3-6 is **unconstitutional** for a litany of reasons under s. 7 and 8 of the *Charter*. If s. 11(2) authorizes this Rule, then it would necessarily be **unconstitutional** as well. The AGBC has not agreed that 11(2) authorizes the passing of Rule 3-6. To the extent that anything remains after a preliminary hearing on the constitutionality of ss. 36(a) of the *LPA* or the hearing of the *LPA* Petition, the following is respectfully submitted:

621. **Rule 3-6(1)** violates s. 7 of the *Charter*, *inter alia*:

- i. the member **is suspended** immediately and indefinitely for failing to comply with an investigation administrative search and seizure authorization, which is not in accordance with the principles of fundamental **justice**, because the suspension flows from “proof” merely that the administrative search and seizure authorization was granted, rather than the validity of such an order or the bases upon which it was granted;

- ii. in that the member **is suspended** immediately and indefinitely for failing to comply with an administrative search and seizure authorization, which is not in accordance with the principles of fundamental **justice**, because the member **is suspended** irrespective of the triviality of and/or the reasons for failure or refusal to comply; and/or
- iii. the word “satisfaction” is exceedingly vague, overbroad and arbitrary.

622. **Rule 3-6(2)** violates s. 7 of the *Charter*, *inter alia*, for the following reasons:

- ii. the member **is suspended** indefinitely for failure or refusal to comply with an administrative search and seizure authorization or order, which is not in accordance with the principles of fundamental **justice**, because the member **is suspended** until he or she has complied to the subjective “satisfaction” of the Executive Director of the LSBC; iii. the member **is suspended** immediately and indefinitely for failure or refusal to comply with an administrative search and seizure authorization or order, which is not in accordance with the principles of fundamental **justice**, as the member may **only** delay or halt the suspension order upon showing “special circumstances”; and
- iv. the phrase “special circumstances” is vague and arbitrary when considered in the context of the discretion of the **Discipline Committee** in relation to the very search and seizure order has granted.

JRPA Petition

623. To the extent that the academic aspect of the JRPA must be argued, the SSO must be set aside for the litany of independent and disjunctive grounds espoused above. The Petitioner submits that he should have the copy(ies) of the seized hard drive returned to him along with the ancillary orders sought in the JRPA Petition.

Costs

624. It would be premature to seek costs against the AGBC until it has replied to the Petitioner's invitation to consent to certain relief that is being sought in relation to the aforementioned Impugned Sections and present a joint submission to the Honourable Court that is in accordance with its duties. However, the Petitioner puts on notice that it is wasteful of tax

625. The Plaintiff seeks an order of special costs against the LSBC from June 2, 2014 to the date of the judgments on liability and the return of all stolen property.

All of which is respectfully submitted to this Honourable Court:



Kevin A. McLean, (B.A., J.D., CIM)
Former Barrister and Solicitor
Chartered Investment Manager

APPENDIX "A"

LEGISLATION

Charter Rights and Supreme Law of Canada

1. *Canadian Charter of Rights and Freedoms* Part I of *The Constitution Act*, 1982 being Schedule B to the *Canada Act*, 1982 (the "*Charter*"), Ss. 7, 8, 9, 10 and Part VII, s. 52

Provincial Statutory Authority

2. *Legal Profession Act*, S.B.C. 1998, c. 9 (the “*LPA*”) (Pre May 14, 2012 and Post May 14, 2012 – select sections with Point in Time references)
3. *Interpretation Act*, R.S.B.C. 1996, C. 238 (the “*IA*”) (select sections)

Regulations and Interpretation

LSBC Rules

4. Select LSBC Rules and Changes (2010 and onwards)

Regulatory Interpretation of Statutory Powers

5. Report of the Mirror Imaging Working Group: Forensic Copying of Computer Records by the Law Society dated October 14, 2009 (“**LSBC Forensic Seizure Paper**”)

JURISPRUDENCE

Statutory Interpretation

6. *AXA Pacific Insurance Co. v. British Columbia*, 2004 BCSC 69 [“*Axa*”]

Administrative Seizures and Warrants

7. *Mulgrew v. The Law Society of British Columbia*, 2016 BCSC 1279 [“*Mulgrew*”]
8. *McLean v. Law Society of British Columbia*, 2017 BCSC 1713 [“*MacIntosh Restraining Order*”]

Quasi-criminal Proceedings: Consequences

9. *Dr. Henderson v. The College of Physicians and Surgeons of Ontario*, 2003 CanLII 10566 (O.N.C.A.) [“*Dr. Henderson*”]

Suspensions: Seriousness of conduct

10. *Re, Hordal*, 2004 LSBC 36 [“*Hordal*”]

Section 7 of the *Charter*

11. *Pierce v. Law Society of British Columbia*, [1993] B.C.W.L.D. 1416 (S.C.) [“*Pierce*”]

Section 8 of the *Charter*

12. *R. v. Dymment*, [1988] 2 SCR 417 [“Dymment”]
13. *Bishop v. College of Physicians and Surgeons of B.C.*, 1985 CanLII 569 (B.C.S.C.); affirmed at BCCA, 1986 CanLII 989 [“Bishop”]
14. *Thomson Newspapers Ltd. v. Canada*, 1990 CanLII 135 (S.C.C.) [“Thomson”]
15. *Canada (Attorney General) v. Chambre des notaires du Québec*, [2016] 1 SCR 336 [“Chambre”]
16. *R. v. McKinlay Transport Ltd.*, 1990 CanLII 137 (S.C.C.) [“McKinlay”]
17. *Hunter et al. v. Southam Inc.*, [1984] 2 SCR 145 [“Hunter”]
18. *Schachter v. Canada*, [1992] 2 SCR 679 [“Schachter”]
19. *Arkinstall v. City of Surrey*, 2010 BCCA 250 [“Arkinstall”]
20. *British Columbia Securities Commission v. Branch*, [1995] 2 SCR 3 [“Branch”]
21. *Golden Valley Golf Course Ltd. v. British Columbia*, 2001 BCCA 392 [“Golden Valley”]
22. *Goodwin v. British Columbia (Superintendent of Motor Vehicles)*, 2015 SCC 46 [“Goodwin”]
23. *Vancouver International Airport Authority V. Public Service Alliance of Canada*, 2010 FCA 158 [“YVR Authority”]
24. *R v Vu*, [2013] 3 SCR 657 [“Vu”]

Section 1 of the Charter

25. *Lavallee, Rackel & Heintz v. Canada (Attorney General)*; *White, Ottenheimer & Baker v. Canada (Attorney General)*; *R. v. Fink* 2002 SCC 61 [“Lavalee”]

Challenge to Enabling Statute versus Subordinate Regulation

26. *Canada (Information Commissioner) v. Canada (Prime Minister)*, [1993] 1 FCR 427, 1992 CanLII 2414 (F.C.).

STANDARD OF REVIEW (1) OF ISSUES OF NATURAL JUSTICE, PROCEDURAL FAIRNESS, JURISDICTION, VIRES AND CONSTITUTIONALITY

27. *Westcoast Energy Inc. v. Canada (National Energy Board)*, [1998] 1 SCR 322 [“Westcoast Energy”]
28. *United Taxi Drivers' Fellowship of Southern Alberta v. Calgary (City)*, [2004] 1 SCR 485 [“United Taxi”]
29. *Ellis-Don Ltd. v. Ontario (Labour Relations Board)*, 2001 SCC 4 [“Ellis Don”]

APPLICANT’S DUTY IN EX PARTE PROCEEDINGS AND HEARING

30. *Lemare Lake Logging Ltd. v. British Columbia (Minister of Forests and Range)*, 2009 BCSC 909 [“Lemare”]

EX PARTE HEARINGS

31. *Kane v. Board of Governors of the University of British Columbia*, [1980] S.C.R. 1105 [“Kane”]
32. *Cardinal v. Kent Institution*, 1985 CanLII 23 (S.C.C.) [“Cardinal”]

REQUISITE NOTICE TO MEMBER

33. *Knight v. Indian Head School Division No. 19*, 1990 CanLII 138 (S.C.C.) [“Knight”]

ORAL HEARING REQUIREMENT

34. *Khan v. University of Ottawa*, 1997 CanLII 941 (O.N.C.A.). [“Khan”]
35. *Newfoundland Telephone Co. v. Newfoundland (Board of Commissioners of Public Utilities)*, 1992 CanLII 84 (S.C.C.). [“Newfoundland Telephone Co.”]

EVIDENCE UNDER OATH REQUIREMENT [SEE TABS]

RESPONDENT’S DISCLOSURE OBLIGATIONS

36. *Waxman v. Ontario Racing Commission*, 2006 CanLII 35617 (O.N.S.C.D.C.);
37. *Markandey v Ontario (Board of Ophthalmic Dispensers)* [1994] O.J. No. 484 (O.C.G.D.);

LEGAL CLASSIFICATION OF DRACONIAN ORDER GRANTED BY ADM

38. *Bishop v. College of Physicians and Surgeons of British Columbia* (1985), 1985 CanLII 569 (B.C.C.A.) [“Bishop”]
39. *Darzinskas*, 1981 CanLII 1803 (O.N.S.C.). [“Darzinskas”]

STANDARD OF REVIEW (2) WHEN NO REASONS (FORMAL OR INFORMAL; WRITTEN OR ORAL) ARE ISSUED TO SUPPORT THE SEIZURE ORDER

40. *Clifford v. Ontario Municipal Employees Retirement System*, 2009 ONCA 670 [“Clifford”]

TRIBUNALS’ REQUIREMENT TO ISSUE REASONS FOR DECISIONS

41. *Baker v. Canada*, 1999 CanLII 699 (S.C.C.). [“Baker”]
42. *MacDonald v. Demont*, 2001 NSCA 61 [“Demont”]

43. *Vancouver International Airport Authority v. Public Service Alliance of Canada*, 2010 FCA 15 [“VIAA”] [Court references “four purposes”]
44. *Williams v. Canada (Minister of Citizenship and Immigration)* (1996), 1996 CanLII 4093 (FC) [“Williams”]
45. *Megens v. Ontario Racing Commission*, 2003 CanLII 26509 (O.N.S.C.). [“Megens”]
46. *Lerew v. St. Lawrence College of Applied Arts and Technology*, 2005 CanLII 11798 [“Lerew”]
47. *Figueiras v. (York) Police Services Board*, 2013 ONSC 7419 [“Figueiras”]
48. *Law Society of Upper Canada v. Neinstein*, 2010 ONCA 193 [“Neinstein”]
49. *Gray v. Ontario (Disability Support Program, Director)* 2002 CanLII 7805 (O.N.C.A.) [“Gray”]
50. *Syndicat des employés de la fonction publique de l'Ontario et al. v. Collège des Grands Lacs et al.* (2005), 2005 O.A.C. 101 (Div. Ct.) [“Syndicat”]
51. *Schluter-Systems KG v. Dollar Tile Distributors Ltd.*, 2013 BCSC 2508 [“Dollar Tile”]
52. *Regal Ideas Inc. v. Haus Innovations Inc.*, 2016 BCSC 1883 [“Regal Ideas”]
53. *Pierce v. Mercer Gold Corporation et al.*, [Unreported] under Docket No. S-116400 [“Mercer Gold”]

LEGAL EFFECT OF ADM FAILING OR NEGLECTING TO ISSUE ANY REASONS

54. *Newfoundland and Labrador Nurses ' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 [“Nurses Union”]
55. *Macdonald v. Mineral Springs Hospital*, 2008 ABCA 273 [“Mineral Springs”]
56. *Congrégation des témoins de Jéhovah de St-Jérôme-Lafontaine v. Lafontaine (Village)*, 2004 SCC 48 [“Congregation”]
57. *Kalin v. Ontario College of Teachers* (2005), 2005 CanLII 18286 (ON SCDC) [“Kalin”]
58. *Law Society of Upper Canada v. Thomas Michel Hicks*, 2006 ONLSAP 1 [“Hicks”]
59. *Boyle v. New Brunswick (Workplace Health, Safety and Compensation Commission)*, 1996 CanLII 4829 (N.B.C.A.) [“Boyle”]
60. *Law Society of New Brunswick v. Ryan*, [2003] 1 SCR 247 [“Ryan”]
61. *Walsh v. Council for Licensed Practical Nurses* [“Walsh”]
62. *Tsimidis v. Certified General Accountants of Ontario*, 2014 ONSC 4236 [“Tsimidis”]

STANDARD OF REVIEW (3): CONFLICT OF INTERESTS (BIAS, REASONABLE APPREHENSION OF BIAS, PRINCIPLE OF DICTATION AND DEPENDENCE)

63. *Toronto (Metropolitan Police Services Board v. Young*, [1] [1997] O.J. No. 1076 (Div. Ct.) [“Young”]
64. *Gismondi v. Ontario (Human Rights Commission)* (2003), 2003 CanLII 21371 (O.N.S.C.D.C.) [“Gismondi”]

REASONABLE APPREHENSION OF BIAS [SEE ABOVE TABS]

INDEPENDENCE

- 65. *Bell Canada v. Canadian Telephone Employees ASSOCIATION*, 2003 SCC 36 [“Bell”]
- 66. *Ghirardosi v. Minister of Highways for British Columbia*, [1966] SCR 367, 1966 CanLII 47 [“Ghirardosi”]

VIREES

- 67. *Gardner v Law Society of British Columbia* (1990), 46 BCLR (2d) 122 (SC), affirmed (1991) 61 BCLR (2d) 219 (CA) [“Gardner”]

CONSENT

- 68. *Canada (Minister of Citizenship and Immigration) v. Jaballah*, 2009 FC 33 [“Jaballah”]
- 69. *Simon Gillies et al v. Toronto District School Board*, 2015 ONSC 1038 [“Toronto School Board”]

VIOLATION OF CHARTER RIGHTS [SEE ABOVE TABS]

COUNSEL OBLIGATIONS AND COSTS

- 70. *Glover v. Leakey*, 2017 BCSC 1287 [“Glover”]
- 71. *Le Soleil Hospitality Inc. v. Louie*, 2010 BCSC 1183 [“Le Soleil”]
- 72. *Grossman v. Toronto General Hospital* (1983), 41 O.R. (2d) 457 (H.C.) [“Grossman”]

Appendix “B”

S. 26 of the *LPA* vs. the Impugned Sections

Analysis	“Investigation into Specific Matter or File” under s. 26 of the <i>LPA</i>	LSBC execution under Impugned Sections
Conducted by	Law Society	Law Society
Member receives copy complaint	Yes	LSBC confirmed that a search and seizure under s. 36 is not complaint driven
Application to administrative decision maker	No	Yes (Chair of Discipline Committee is different than a designate)
Involves administrative decision maker or tribunal	No	Yes
Element of “hear and decide”	No	Yes
Governed by the <i>Administrative</i>	No	Yes

<i>Tribunals Act</i> , S.B.C. 2004, c. 45 (the “ <i>ATA</i> ”)		
Decision maker has immunity under s. 56 of <i>ATA</i>	No	Yes
Order granted	Depends	Yes
Application, ex parte hearing and resulting order	No	Yes
Adjudicative in nature	No	Yes (Further, the Respondent compares the role of this ADM to a justice of the peace in a criminal search warrant process. A Justice of the Peace must act judicially in that circumstance).
Order served	Yes	Yes

A fair and economic alternative to a claim filed in Supreme Court and a subsequent court application seeking orders to search and seize wherever located	No	Yes
Two forensic accountants and Certified Fraud Examiner intrude into office	No	Yes
Element of surprise and immediacy compliance	No	Yes
LSBC enters office without consent	No	Yes
Immediate Suspended for failure to comply	No.	Yes, the member is immediately suspended from the practice of law
Ability to prevent surrender or seizure of the documents or any	Yes	No
other evidence regardless of form		
Ability to seek a stay before physical seizure	Yes	No
“At stake” for the member	Nothing at the time of the demand for specific documents under investigation	Immediate loss of livelihood and potential permanently
“Words of limitation and tailored to an investigation”	Yes	No

Seizing of irrelevant material	No	Yes
Seizing of a member's privileged communications with his or her solicitor	No	Yes
Ability to enter home or office	No	Yes
Reasonable time to seek independent legal advice and counsel	Yes	No
Time pressured nature of demand	Often two to three weeks with several follow ups	Immediate production of computers and personal cell phones for forensic copying
Return of any documents provided to the LSBC upon request	Yes	No
<i>Charter</i>	As noted in Branch, a demand to a witness to produce certain records and things at a future date in a proceeding did not mean the seizure was unreasonable because there was "no intrusion into offices or homes".	

Appendix “C”

Analysis	Search and Seizure under s. 37 of <i>LPA</i>	Search and Seizure under Impugned Sections	Conclusion
Initiating document and required documents	Notice of Civil Claim, then Notice of Application with supporting material	No initiating documents, then a “Privileged and Confidential “Opinion”	Public documents versus secretive documents
Evidence under Oath	Yes	No	Section 37 of the <i>LPA</i> requires evidence under

			oath for seizure of “other records”
Hearing	Yes	No	The absence of any informal or formal hearing avoids the “checks and balances”
Location	Supreme Court	Anywhere the decision maker feels	The absence of a location makes it further unfair to the member

Transcript	Yes	No	The absence of a transcript makes it further difficult to determine for the member or regulate to determine how the decision was reached
Under Power of Dictation	No	Yes	The Chair of the Discipline Committee (“ADM”) is not acting as an independent arbiter of the application but rather as a client of his lawyer
Solicitor-client relationship between applicant and decision maker	No	Yes	The ADM is not acting as an independent arbiter of the application but rather as a client of his lawyer. This is a ground that requires that a justice of the Supreme Court set aside the order.
PD 31 Model Order Adopted by LSBC followed	Yes	No	The LSBC adopts a Model Order for court applications but uses a one pager for regulatory proceedings. It is a sign of subverting the court process at the detriment of the member.
Limits on Order	Yes	None (There are no words of limitation)	The SSO served on the member under the penalty of loss of livelihood.
Reasons	Yes (see:	No	There are none and there
	jurisprudence)		is nothing to review.

<i>Ex parte</i>	Determined by judge	Always	Mark Bosnich fails in those requirements in full, frank and fastidious disclosure. This all against the backdrop of him being a senior lawyer. His mentioning of driving offences has absolutely nothing to do with trust accounting. It is indicator of malice.
Without notice	Determined by judge: could be with regular notice or shorter notice	Always	The member has no opportunity to defend himself or herself against the most penal and intrusive orders.
Affidavit material	Yes	Never	These are further breaches of the common law and their duties of procedural fairness.
Independent Supervising Solicitor	Always	No	These are further breaches of the common law and their duties of procedural fairness.
Officer of the Court attends for seizure	Always	CGA's investigator and	These are further breaches of the common law and their duties of procedural fairness.
Underlying materials	Always (NOCC, NOA, Affidavits)	Never as admitted by the ADM in discovery	These are further breaches of the common law and their duties of procedural fairness. It makes it impossible for the member to determine whether to consent. Further, it makes it impossible for the court to engage in any type of review. It removes the courts from the process. It is by design and intent.

<i>ISS safeguarding solicitor-client privilege</i>	YES	No	These are further breaches of the common law and their duties of procedural fairness.
Two hour period to consult counsel	Yes	No	These are further breaches of the common law and their duties of procedural fairness. The member cannot conceivably seek proper legal advice in this area without underlying materials, Reasons, et al without a two-hour period to do so. The requirements for a voluntary consent: (i) the individual must be advised of his right to refuse or withdraw his consent at any time; (ii) the individual must be made aware of the consequences of his consent to the search; and (iii) the individual must be informed of his right to counsel in order to have explained to him the consequences of his consent to the search: <i>Borden</i> at 162.
Two hour period to consult to gather privileged document	Yes	No	These are further breaches of the common law and their duties of procedural fairness.
List making requirement	Yes	No	These are further breaches of the common law and their duties of procedural fairness.

Independent consultant holding of documents	Yes	Consultant may or may not be independent	These are further breaches of the common law and their duties of procedural fairness.
Evidence only use for the purposes of that action or investigation	Yes	No, as Mr. Gomery stated that they can be used for future purposes which are not relevant at the time of execution of the SSO .	These are further breaches of the common law and their duties of procedural fairness.
Right to vary or discharge it	Yes	No	This makes it a final order where <i>Knight</i> requires certain procedural rights afforded to the member.
Apply for posting of security	Yes	No	This is another example of further unfairness and the economics.
Ability to have it reviewed or appealed	Yes, one has that right.	No	Section 47 allows a right of review of a “panel”. The ADM in this case is not a Panel. Section 48 allows an “appeal” of a Review Board. The ADM is not a “review board”.
Ability to seek directions	Yes	No	This a further act by the LSBC of oppressing the member so there is no ability but consent or lose one’s career.
Judicial Review	N/A	No, as the bases are withheld.	The ADM admits that his Limitless Seizure
Search without consent	No	No	Despite not having consent, the LSBC investigators commenced a search.

Seizure without consent	No	No	Despite not having consent, the LSBC investigators seized objects and documents.

Appendix “D”

Impugned Sections in *Hunter* vs. Impugned Sections of *LPA*

Analysis	<i>Combines Investigation Act</i>	<i>Impugned Sections</i>	Conclusion
Regulatory body	Yes	Yes	Same
Proceeding type	Quasi-criminal to criminal	Quasi-criminal to criminal	Same

Challenge	Legislation	Legislation	Same
<i>Charter</i> rights at issue	Section 8	Section 7,8, 9 and 10	<i>LPA</i> is more intrusive
Ex parte regulatory proceeding	Yes	Yes	Same
Without notice to regulated party	Yes	Yes	Same
Right to search premises	Yes	Yes	Same
Right to seize	Yes	Yes	Same
Required evidence under oath	No	No	Same
Required attendance at court for order	No	No	Same
Administrative decision maker grants administrative order	Yes	Yes	Same
Entirely neutral arbiter	No	No	Same
Warrantless search and seizure	Yes	Yes	Same
Search or seizure prevented	No	No	Same
Prior authorization feasible	Yes	Yes	Same
Arbiter charged with investigative or prosecutorial functions	Yes	Yes	Same
Reasonable and probable grounds that offence has been committed	No	No	Same
Search is location dependent	No	No	Same

Seizure is limitless	Some restraint	Yes	<i>LPA</i> is more intrusive
Records seized subject to solicitor-client privilege	Unclear	Yes	<i>LPA</i> is more intrusive

Combines Investigation Act, R.S.C 1970, c. C-23, ss. 10(1), (3).

10. (1) Subject to subsection (3), in any inquiry under this Act the Director [of Investigation and Research of the Combines Investigation Branch] or any representative authorized by him *may enter any premises* on which the *Director believes* there *may* be evidence relevant to the matters being inquired into and may examine any thing on the premises and may *copy* or take away for further examination or copying any book, paper, **record** of other document that in the opinion of the Director or his authorized representative, as the case may be, *may* afford such evidence.

...

(3) Before exercising the power conferred by subsection (1), the Director or his representative **shall produce a certificate** from a member of the [Restrictive Trade Practices] Commission, which may be granted on the *ex parte* application of the Director, authorizing the exercise of such power.

Appendix “E”

LAW SOCIETY OF BC DECISIONS 2018 - 2003

SUMMARY:

CONFLICTS OF INTERESTS, BIAS, LACK OF INDEPENDENCE, AND/OR REASONABLE APPREHENSION OF BIAS

The following denotes instance where a member of the Discipline Committee in said year and sat on a hearing panel and adjudicated in the quasi-criminal process. There

2018 (2 instances)

1. Dean Lawton - [Gerhardus Albertus Pyper](#) - 2018 LSBC 10
- 2.Carolynn Ryan - [Brian Peter Grant Kaminski](#) 2018 LSBC 14

2017 (13)

3. Nancy G. Merrill, Chair - Daniel Clayton Gallant - 2017 LSBC 36
4. Nancy Merrill, QC, Chair - [Gerhardus Albertus Pyper](#) - 2017 LSBC 27 (note: *Decision on Preliminary Application Regarding Jurisdiction and Bias*)
5. Nancy G. Merrill, Chair - [Daniel Clayton Gallant](#) 2017 LSBC 21
6. C.E. Lee Ongman - [Peter Krogh Jensen](#) - 2017 LSBC 11
7. C.E. Lee Ongman, Chair - [Michael John Butterfield](#) - 2017 LSBC 02
8. Phil Riddell, Chair - [Donald Franklin Gurney](#) - 2017 LSBC 42
9. Phil Riddell, Chair - [Gerhardus Albertus Pyper](#) - 2017 LSBC 41
10. Philip A. Riddell, Chair - [Re: Lawyer 17](#) - 2017 LSBC 33
11. Phil Riddell, Chair - [Donald Franklin Gurney](#) - 2017 LSBC 32
12. Philip Riddell, Chair - [Robert Collingwood Strother](#) - 2017 LSBC 30
13. Philip Riddell, Chair - [Robert Collingwood Strother](#) - 2017 LSBC 23
14. Philip Riddell, Chair - [Pir Indar Paul Singh Sahota](#) - 2017 LSBC 18
15. Phil Riddell, Chair - [Re Lawyer 17](#) - 2017 LSBC 10

2015 (4)

16. Miriam Kresivo, QC, Chair - **Kevin Alexander McLean** - 2015 LSBC 09
17. Miriam Kresivo, QC, Chair - **Kevin Alexander McLean** - 2015 LSBC 30
18. Gregory Petrisor - **Lyle Daniel Perry** - 2015 LSBC 13
19. Gregory Petrisor - **Cameron John Pham** - 2015 LSBC 14

2011 (2)

20. Richard Stewart - [Randall Keith McRoberts](#) - 2011 LSBC 04
21. Kathryn Berge, QC - [Randall Keith McRoberts](#) - 2011 LSBC 04

2010 (4)

22. Richard Stewart, QC - [Randall Keith McRoberts](#)- 2010 LSBC 17
23. Kathryn Berge, QC, Chair - [Randeep Singh Sarai](#) - 2010 LSBC 26
24. Stacy Kuiack - [Randeep Singh Sarai](#) - 2010 LSBC 26
25. Herman Van Ommen - [Re: Lawyer 10](#) - 2010 LSBC 02

2008 (1)

26. David A. Zacks, QC - - [John Owen Richardson](#)
27. 2008 LSBC 05

2007 (6)

- 28. Ken Dobell - [Sheldon Goldberg](#) - 2007 LSBC 53
- 29. Ken Dobell - [Sheldon Goldberg](#) - 2007 LSBC 55
- 30. Gavin Hume - [Marcus O Sullivan](#) - 2007 LSBC 08
- 31. Gavin Hume - [Marcus O Sullivan](#) - 2007 LSBC 44
- 32. Gavin Hume - [Rodney John Strandberg](#) - 2007 LSBC 19
- 33. Jan Lindsay - [Douglas Warren Welder](#) - 2007 LSBC 29

2006 (2)

- 34. Ken Dobell - [Danine Lorraine Geronazzo](#) - 2006 LSBC 50 -
- 35. June Preston - [Crawford Grant Edwards](#) - 2006 LSBC 27

2005 (5)

- 36. Robert McDiarmid, Q.C - [Sheldon Goldberg](#) - 2005 LSBC 10
- 37. Robert W. McDiarmid, Q.C - [Sheldon Goldberg](#) - 2005 LSBC 22
- 38. Robert W. McDiarmid, Q.C., - [Sanjeev Sanj Rai](#) - 2005 LSBC 37
- 39. John J.L. Hunter, Q.C., - [Rudi Gellert](#) - 2005 LSBC 15
- 40. William Jackson - [James Neil Rodgers](#) - 2005 LSBC 42

CONFLICTS OF INTEREST -2004 (12)

- 41. John Hunter, Q.C., Single Bench Panel - [Rudi Gellert](#) - 2004 LSBC 28 - 42. June Preston - [Peter Wallace Hammond](#) - 2004 LSBC 18
- 43. June Preston - [Peter Wallace Hammond](#) - 2004 LSBC 21
- 44. June Preston - [Peter Wallace Hammond](#) - 2004 LSBC 32
- 45. Art Vertlieb, Q.C. - [Timothy John Hordal](#) - 2004 LSBC 36
- 46. Art Vertlieb, Q.C., - [Re Lawyer 2](#) - 2004 LSBC 09
- 47. Art Vertlieb, Q.C., - [Re: Lawyer 2](#) - 2004 LSBC 42
- 48. Art Vertlieb, Q.C., [Robert Gordon Milne](#) - 2004 LSBC 19
- 49. G. Ronald Toews - [James Douglas Hall](#) - 2004 LSBC 01
- 50. G. Ronald Toews - [Martin David Jones](#) - 2004 LSBC 10
- 51. G. Ronald Toews - [Martin David Jones](#) - 2004 LSBC 37
- 52. G. Ronald Toews - [Brian Maurice Legge](#) - 2004 LSBC 02

Conflicts of Interest - 2003 (2)

- 53. William Jackson - [James Neil Rodgers](#) - 2005 LSBC 08
- 54. Peter J. Keighley, QC - [Raymond William Barton](#) - [2003] LSBC 38
- 55. Anne Wallace - [Brian Maurice Legge](#) - 2003 LSBC 42

of Different Lawyers Affected

The following represents the number of lawyers who have been affected by decisions who have been affected

1. **Gerhardus Albertus Pyper – Disbarred - (none – use other contact information)**
2. **Brian Peter Grant Kaminski – Disbarred - non practising**
([https://www.lawsociety.bc.ca/lsrc/apps/lkup/mbr-](https://www.lawsociety.bc.ca/lsrc/apps/lkup/mbr-details.cfm?encrypted=%2C%27%2A%3F%5D%22P%5D%2A%24%5C%3D%3EG%3F%5D%5D%0A)
[details.cfm?encrypted=%2C%27%2A%3F%5D%22P%5D%2A%24%5C%3D%3EG%3F%5D%5D%0A](https://www.lawsociety.bc.ca/lsrc/apps/lkup/mbr-details.cfm?encrypted=%2C%27%2A%3F%5D%22P%5D%2A%24%5C%3D%3EG%3F%5D%5D%0A)
3. Daniel Clayton Gallant - **Disbarred - none – use other contact information)**
4. **Peter Krogh Jensen – practicing**
([https://www.lawsociety.bc.ca/lsrc/apps/lkup/mbrdetails.cfm?encrypted=%2C%27Z7](https://www.lawsociety.bc.ca/lsrc/apps/lkup/mbrdetails.cfm?encrypted=%2C%27Z7%5C%23%21%5D%3F%24%5C%3D%3EG%3F%5D%5D%0A)
[%5C%23%21%5D%3F%24%5C%3D%3EG](https://www.lawsociety.bc.ca/lsrc/apps/lkup/mbrdetails.cfm?encrypted=%2C%27Z7%5C%23%21%5D%3F%24%5C%3D%3EG%3F%5D%5D%0A)
[%3F%5D%5D%0A](https://www.lawsociety.bc.ca/lsrc/apps/lkup/mbrdetails.cfm?encrypted=%2C%27Z7%5C%23%21%5D%3F%24%5C%3D%3EG%3F%5D%5D%0A)
pjensen@beadleraven.com
5. **Michael John Butterfield - practicing**
([https://www.lawsociety.bc.ca/lsrc/apps/lkup/mbr-](https://www.lawsociety.bc.ca/lsrc/apps/lkup/mbr-details.cfm?encrypted=%2C%27%2A%3F%5E%200I%28%24%5C%3D%3EG%3F%5D%5D%0A)
[details.cfm?encrypted=%2C%27%2A%3F%5E%200I%28%24%5C%3D%3EG%](https://www.lawsociety.bc.ca/lsrc/apps/lkup/mbr-details.cfm?encrypted=%2C%27%2A%3F%5E%200I%28%24%5C%3D%3EG%3F%5D%5D%0A)
[3F%5D%5D%0A](https://www.lawsociety.bc.ca/lsrc/apps/lkup/mbr-details.cfm?encrypted=%2C%27%2A%3F%5E%200I%28%24%5C%3D%3EG%3F%5D%5D%0A)
mb@butterfieldlaw.ca
6. **Donald Franklin Gurney – Former member**
[https://www.lawsociety.bc.ca/lsrc/apps/lkup/mbr-](https://www.lawsociety.bc.ca/lsrc/apps/lkup/mbr-details.cfm?encrypted=%2C%26Z%23%5C%22Q%5D%3F%24%5C%3D%3EG%3F%5D%5D%0A)
[details.cfm?encrypted=%2C%26Z%23%5C%22Q%5D%3F%24%5C%3D%3EG%3F%5](https://www.lawsociety.bc.ca/lsrc/apps/lkup/mbr-details.cfm?encrypted=%2C%26Z%23%5C%22Q%5D%3F%24%5C%3D%3EG%3F%5D%5D%0A)
[D%5D%0A](https://www.lawsociety.bc.ca/lsrc/apps/lkup/mbr-details.cfm?encrypted=%2C%26Z%23%5C%22Q%5D%3F%24%5C%3D%3EG%3F%5D%5D%0A)
7. **Re: Lawyer 17 - none – use other contact information)**
8. **Robert Collingwood Strother – Disbarred - none – use other contact information)**
9. **Pir Indar Paul Singh Sahota - Suspended**
[https://www.lawsociety.bc.ca/lsrc/apps/lkup/mbr-](https://www.lawsociety.bc.ca/lsrc/apps/lkup/mbr-details.cfm?encrypted=%2C%27%2A%3FZ%220E%2B%24%5C%3D%3EG%3F%5D%5D%0A)
[details.cfm?encrypted=%2C%27%2A%3FZ%220E%2B%24%5C%3D%3EG%3F%5D](https://www.lawsociety.bc.ca/lsrc/apps/lkup/mbr-details.cfm?encrypted=%2C%27%2A%3FZ%220E%2B%24%5C%3D%3EG%3F%5D%5D%0A)
[%5D%0A](https://www.lawsociety.bc.ca/lsrc/apps/lkup/mbr-details.cfm?encrypted=%2C%27%2A%3FZ%220E%2B%24%5C%3D%3EG%3F%5D%5D%0A)
10. **Kevin Alexander McLean – disbarred Former member**
11. **Lyle Daniel Perry – practicing (new call)**
<https://www.lawsociety.bc.ca/lsrc/apps/lkup/mbr->

[details.cfm?encrypted=%2C%27%2A%3B_%22%40I%28%24%5C%3D%3EG%3F%5D%5D%0A](https://www.lawsociety.bc.ca/lsrc/apps/lkup/mbr-details.cfm?encrypted=%2C%27%2A%3B_%22%40I%28%24%5C%3D%3EG%3F%5D%5D%0A)
lyleperry@mhwlaw.ca

12. **Cameron John Pham - Practising**

<https://www.lawsociety.bc.ca/lsrc/apps/lkup/mbr-details.cfm?encrypted=%2C%27%2A%3FX%22%40M%27%24%5C%3D%3EG%3F%5D%5D%0A>

13. **Randall Keith McRoberts – – Disbarred - None (Use other contact information)**

14. **Randeep Singh Sarai - practicing**

Tiwana Deol Sandhu LLP – May 22, 2002

<https://www.lawsociety.bc.ca/lsrc/apps/lkup/mbrdetails.cfm?encrypted=%2C%27%2A%3FY%23P9%24%5C%3D%3EG%3F%5D%5D%0A>

15. **Re: Lawyer 10 – unavailable**

16. **John Owen Richardson – (non-practicing)**

<https://www.lawsociety.bc.ca/lsrc/apps/lkup/mbr-details.cfm?encrypted=%2C%26J%2F%5E%231%5D%3F%24%5C%3D%3EG%3F%5D%5D%0A>

17. **Sheldon Goldberg – Disbarred - None (Use other contact information)**

18. **Marcus O Sullivan – Disbarred - None (Use other contact information)**

19. **Rodney John Strandberg - Disbarred None (Use other contact information)**

20. **Douglas Warren Welder - Disbarred)**

<https://www.lawsociety.bc.ca/lsrc/apps/lkup/mbr-details.cfm?encrypted=%2C%27Z%3B%5B%22Q%5D%3F%24%5C%3D%3EG%3F%5D%5D%0A>

21. **Danine Lorraine Geronazzo - Disbarred None (Use other contact information)**

22. **Crawford Grant Edwards - (Disbarred)**

<https://www.lawsociety.bc.ca/lsrc/apps/lkup/mbr-details.cfm?encrypted=%2C%26J3Z%22%21%5D%3F%24%5C%3D%3EG%3F%5D%5D%0A>

23. [Sanjeev Sanj Rai](#) – practicing - railaw@shawbiz.ca –
24. [Rudi Gellert](#) - Disbarred - <https://www.lawsociety.bc.ca/lsrc/apps/lkup/mbr-details.cfm?encrypted=%2C%27%2A%3F%5C%23PA%27%24%5C%3D%3EG%3F%5D%5D%0A>
25. [James Neil Rodgers](#) – **Disbarred - None (Use other contact information)** –
26. [Peter Wallace Hammond](#) – Disbarred - <https://www.lawsociety.bc.ca/lsrc/apps/lkup/mbr-details.cfm?encrypted=%2C%27%3A%2BZ%23Q%5D%3F%24%5C%3D%3EG%3F%5D%5D%0A>
27. [Timothy John Hordal](#) – **Disbarred - None (Use other contact information)**
28. [Lawyer 2](#) – **unavailable**
29. [Robert Gordon Milne](#) - Jawl Bundon LLP - rgm@jawlbundon.com – practicing
30. [James Douglas Hall](#) – Disbarred - <https://www.lawsociety.bc.ca/lsrc/apps/lkup/mbr-details.cfm?encrypted=%2C%27%2A%3F%5D%23%20%5D%29%24%5C%3D%3EG%3F%5D%5D%0A>
31. [Martin David Jones](#) - **None (Use other contact information)** -
32. [Brian Maurice Legge](#) - **None (Use other contact information)** –
33. [Raymond William Barton](#) - **None (Use other contact information)** –

2018 LSBC DISCIPLINE DECISIONS

2018 - Composition of the Discipline Committee:

1. Christopher A. McPherson, QC (Chair)

2. Brook J. Greenberg (Vice-Chair)
3. Jasmin Z. Ahmad
4. Barbara Cromarty
5. Michael A. Feder
6. Roland Krueger
7. Julianne K. Lamb
8. Dean P.J. Lawton, QC
9. Carolynn Ryan
10. Heidi Zetzsche

Staff contact

Deborah Armour, QC

2018 Members of Hearing Tribunals

1. Herman Van Ommen, QC, Chair
2. Dennis Day, Public representative
3. Gillian M. Dougans, Lawyer
4. Bruce LeRose, QC, Chair
5. Ralston Alexander
6. Shona Moore, QC, Chair
7. Dan Goodleaf, Public representative
8. Lisa J. Hamilton, QC, Lawyer
9. Elizabeth Rowbotham, Chair
10. Carolynn Ryan, Public representative
11. Donald Silversides, QC, Lawyer
12. Philip Riddell,
13. _____ Amos and
14. Shona Moore
15. Steven McKoen
16. Joost Blom, QC, Chair
17. June Preston, Public Representative
18. Sarah Westwood, Benchler
19. Nancy Merrill, QC, Chair
20. Pinder Cheema, QC
21. Sharon Matthews, QC
22. Elizabeth Rowbotham
23. Tony Wilson, QC

24. Dean Lawton, QC, Chair
25. Haydn Acheson, Public representative
26. Richard Lindsay, QC, Lawyer
27. Steven McKoen
28. Gregory Petrisor, Chair
29. Don Amos, Public representative
30. Jeff Campbell, QC, Benchers
31. Woody Hayes, Benchers
32. Carol Hickman, QC, Lawyer
33. John Hogg, QC, Lawyer
34. Linda Michaluk, Public representative
35. Jeff Campbell, QC

CONFLICT OF INTEREST – 2018 (2)

1. Dean Lawton - [Gerhardus Albertus Pyper](#) - 2018 LSBC 10
2. Carolynn Ryan - [Brian Peter Grant Kaminski](#) 2018 LSBC 14

1.

Sumit Ahuja | *Decision on an Application to Amend Decision*

2018 LSBC 08 Decision issued : February 21 , 2018 Citation issued : November 9 , 2016 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning SUMIT AHUJA RESPONDENT DECISION OF THE HEARING PANEL ON AN APPLICATION TO AMEND DECISION Wri... [Summary](#) | [Read full decision](#)

Panel: Herman Van Ommen, QC, Chair Dennis Day, Public representative Gillian M. Dougans, Lawyer

2.

Pamela Suzanne Boles | *Decision on Disciplinary Action*

2018 LSBC 03 Decision issued : January 24 , 2018 Citation issued : December 22 , 2010 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning PAMELA SUZANNE BOLES RESPONDENT DECISION OF THE HEARING PANEL ON DISCIPLINARY ACTION Hearing... [Summary](#) | [Read full decision](#)

Panel: Bruce LeRose, QC, Chair Ralston Alexander, QC, Lawyer

3.

Thomas Paul Harding | *Decision on Disciplinary Action*

2018 LSBC 09 Decision issued : March 13 , 2018 Citation issued : June 18 , 2013 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning THOMAS PAUL HARDING RESPONDENT DECISION OF THE HEARING PANEL ON DISCIPLINARY ACTION Hearing date :... [Summary](#) | [Read full decision](#)

Panel: Shona Moore, QC, Chair Dan Goodleaf, Public representative Lisa J. Hamilton, QC, Lawyer

4.

Brian Peter Grant Kaminski | *Decision of the Hearing Panel*

2018 LSBC 14 Decision issued : May 1 , 2018 Citation issued : October 18 , 2016 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning BRIAN PETER GRANT KAMINSKI RESPONDENT DECISION OF THE HEARING PANEL Hearing date : September 12 ,... [Summary](#) | [Read full decision](#)

Majority decision: Panel: Elizabeth Rowbotham, Chair Carolyn Ryan, Public representative
Dissenting decision: Donald Silversides, QC, Lawyer

5.

Re Lawyer 17 | *Decision on Costs*

2 an order of another hearing panel (“ 2016 Order ”) by failing to provide all the emails , as ordered . [3] The factual background that gave rise to Citation No . 2 and our decision on Facts and Determination is set out in 2017 LSBC 10 . There we concluded in paras . 81 to 85 : On the face of t... [Summary](#) | [Read full decision](#)

Panel: Riddell, Amos and Moore

6.

[Seanna Michelle McKinley](#) | *Decision on Application for Substituted Service*

2018 LSBC 11 Decision issued : March 13 , 2018 Citation Authorized : January 25 , 2018

Citation Issued : February 2 , 2018 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning SEANNA MICHELLE MCKINLEY RESPONDENT DECISION ON APPLICA...

[Summary](#) | [Read full decision](#)

McKoen

7.

[Ian Frank McTavish](#) | *Decision of the Hearing Panel*

2018 LSBC 02 Decision issued : January 17 , 2018 Oral decision : October 6 , 2017 Citation

issued : March 14 , 2017 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning IAN FRANK MCTAVISH

RESPONDENT DECISION OF THE HEARING PANEL He... [Summary](#) | [Read full decision](#)

Joost Blom, QC, Chair June Preston, Public Representative Sarah Westwood, Benchers

8.

[Ronald Wayne Perrick](#) | *Decision of the Benchers on Review - Court of Appeal pending* 2018

LSBC 07 Decision issued : February 15 , 2018 Oral decision : April 12 , 2017 Citation issued :

December 20 , 2012 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a section 47 Review concerning RONALD WAYNE

PERRICK APPLICANT DECISION OF THE BE... [Summary](#) | [Read full decision](#)

Nancy Merrill, QC, Chair Pinder Cheema, QC Sharon Matthews, QC Elizabeth Rowbotham Tony Wilson, QC

9.

[Gerhardus Albertus Pyper](#) | *Decision on Facts and Determination*

2018 LSBC 10 Decision issued : March 15 , 2018 Citation issued : March 23 , 2015 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c .

9 and a hearing concerning GERHARDUS ALBERTUS PYPER RESPONDENT DECISION OF THE HEARING PANEL ON FACTS AND DETERMINATION Hear... [Summary](#) | [Read full](#)

[decision](#)

Panel: Dean Lawton, QC, Chair Haydn Acheson, Public representative Richard Lindsay, QC, Lawyer

10.

[Pir Indar Paul Singh Sahota](#) | *Decision on Application for Adjournment*

2018 LSBC 06 Decision issued : February 15 , 2018 Citation issued : November 10 , 2016 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC

1998 , c . 9 and a hearing concerning PIR INDAR PAUL SINGH SAHOTA RESPONDENT DECISION ON APPLICATION FOR ADJOURNMENT Written subm... [Summary](#) | [Read full](#)

[decision](#)

Panel: Steven McKoen 11.

[Leonides Tungohan](#) | *Decision on an Application for an Extension of Time*

2018 LSBC 05 Decision issued : February 13 , 2018 Citation issued : October 8 , 2013 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a section 47 Review concerning LEONIDES TUNGOHAN APPLICANT DECISION OF THE REVIEW BOARD ON AN APPLICATION FOR AN E... [Summary](#) | [Read full decision](#)

Gregory Petrisor, Chair Don Amos, Public representative Jeff Campbell, QC, Benchers Woody Hayes, Benchers Carol Hickman, QC, Lawyer John Hogg, QC, Lawyer Linda Michaluk, Public representative

12.

[Leonides Tungohan](#) | *Decision of the Review Board on Costs*

2018 LSBC 15 Decision issued : June 4 , 2018 Citation issued : May 29 , 2013 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a section 47 Review concerning LEONIDES TUNGOHAN RESPONDENT DECISION OF THE REVIEW BOARD ON COSTS Written submissions : Ap... [Read full decision](#)

Greg Petrisor, Chair Don Amos Jeff Campbell, QC John Hogg, QC Woody Hayes Carol Hickman, QC Linda Michaluk

13.

[Gary Russell Vlug](#) | *Decision of the Chambers Benchers*

2018 LSBC 01 Decision issued : January 10 , 2018 Citation issued : April 2 , 2012 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a section 47 Review concerning GARY RUSSELL VLUG RESPONDENT DECISION OF THE CHAMBERS BENCHERS Pre - Review conference... [Summary](#) | [Read full decision](#)

Jeff Campbell, QC

2017 Discipline Decisions

2017 LSBC Discipline Committee Composition

Discipline Reviews opinions concerning lawyers or articulated students which are referred by Law Society staff, the Complainants' Review Committee or the Practice Standards Committee and determines appropriate disciplinary **outcomes**, if any.

BENCHERS

1. Brook Greenberg (Chair)
2. Claude Richmond (Vice-Chair)
3. Barbara Cromarty

4. Jeevyn Dhaliwal
5. Christopher McPherson, QC
6. Nancy Merrill, QC
7. Lee Ongman
8. Philip Riddell

MEMBER

9. Michael Feder

STAFF CONTACT Deborah Armour, QC

2017 Members of hearing tribunals

1. Nancy G. Merrill, Chair - Daniel Clayton Gallant - 2017 LSBC 36
2. Nancy Merrill, QC, Chair - **Gerhardus Albertus Pyper** - 2017 LSBC 27 (note: *Decision on Preliminary Application Regarding Jurisdiction and Bias*)
3. Nancy G. Merrill, Chair - **Daniel Clayton Gallant** - 2017 LSBC 21
4. C.E. Lee Ongman - **Peter Krogh Jensen** - 2017 LSBC 11
5. C.E. Lee Ongman, Chair - **Michael John Butterfield** - 2017 LSBC 02
6. Phil Riddell, Chair - **Donald Franklin Gurney** - 2017 LSBC 42
7. Phil Riddell, Chair - **Gerhardus Albertus Pyper** - 2017 LSBC 41
8. Philip A. Riddell, Chair - **Re: Lawyer 17** - 2017 LSBC 33
9. Phil Riddell, Chair - **Donald Franklin Gurney** - 2017 LSBC 32
10. Philip Riddell, Chair - **Robert Collingwood Strother** - 2017 LSBC 30
11. Philip Riddell, Chair - **Robert Collingwood Strother** - 2017 LSBC 23
12. Philip Riddell, Chair - **Pir Indar Paul Singh Sahota** - 2017 LSBC 18
13. Phil Riddell, Chair - **Re Lawyer 17** - 2017 LSBC 10

1. John Waddell, QC, Chair
2. Paula Cayley, Public representative
3. Brook Greenberg, Benchler
4. Jamie Maclaren, Chair
5. Dr. Gail Bellward, Public representative
6. Carol W. Hickman, QC, Lawyer
7. Phil Riddell, Chair
8. Gillian M. Dougans, Lawyer
9. Phil Riddell, Chair
10. Gillian M. Dougans, Lawyer
11. Herman Van Ommen, QC, Chair
12. Dennis J. Day, Public Representative
13. Gillian M. Dougans, Lawyer
14. Gregory Petrisor, Chair

15. Gavin Hume, QC, Lawyer
16. Laura Nashman, Public representative
17. Thomas Fellhauer, Chair
18. David Layton, QC, Lawyer
19. Linda Michaluk, Public representative
20. Nancy G. Merrill, Chair
21. Lance J. Ollenberger, Public representative
22. Peter D. Warner, QC, Lawye
23. Herman Van Ommen, QC, Chair
24. James Dorsey, QC, Lawyer
25. Dan Goodleaf, Public Representative
26. Sharon Matthews, QC, Chair
27. Satwinder Bains, Public representative
28. Sandra Weafer, Lawyer
29. Philip A. Riddell, Chair
30. Don Amos, Public representative
31. Shona A. Moore, QC, Lawyer
32. Phil Riddell, Chair
33. Gillian M. Dougans, Lawyer
34. Greg Petrisor, Chair
35. Don Amos, Public representative
36. Jeff Campbell, QC
37. Woody Hayes
38. Carol Hickman, QC, Lawyer
39. John Hogg, QC, Lawyer
40. Linda Michaluk, Public representative
41. Philip Riddell, Chair
42. Pinder Cheema, QC
43. Craig Ferris, QC
44. Steven McKoen
45. Elizabeth Rowbotham
46. Sarah Westwood
47. Bruce A. LeRose, QC, Chair
48. Mark Rushton, Public representative
49. Michelle Stanford, Bench
50. Gregory Petrisor, Chair,
51. William Everett, QC and
52. Thelma Siglos
53. Nancy Merrill, QC, Chair
54. Joost Blom, QC, Lawyer
55. Robert Smith, Public representative
56. Craig A.B. Ferris, QC, Chair

57. Ralston S. Alexander, QC, Lawyer
58. Don Amos, Public representative
59. Herman Van Ommen, QC, Chair
60. Carol Gibson, Public representative
61. Peter D. Warner, QC, Lawyer
62. Philip Riddell, Chair
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68. Nancy G. Merrill, Chair
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70. Peter D. Warner, QC, Lawyer
71. Greg Petrisor, Chair
72. Don Amos, Public representative
73. Jeff Campbell, QC, Bench
74. Woody Hayes, Bench
75. Carol Hickman, QC, Lawyer
76. John Hogg, QC, Lawyer
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80. Glenys Blackadder, Public representative
81. James E. Dorsey, QC, Chair Jeff Campbell, QC, Lawyer Carol Gibson, Public representative
82. Dean Lawton, QC (Involving the GLOAT)
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92. Jamie Maclaren
93. Jasmin Z. Ahmad, Chair William Everett, QC, Lawyer
94. Lisa Hamilton, Bench
95. Thelma Siglos, Public representative 96. Robert Smith, Public representative B.
97. William Sundhu, Lawyer
98. Sarah Westwood, Bench
99. Bruce LeRose, QC, Chair

100. Graeme Roberts, Public representative
101. Brook Greenberg, Bench
102. Gregory Petrisor, Chair,
103. William Everett, QC and 104. Thelma Siglos
105. Dean Lawton, QC, Chair
106. Dr. Gail Bellward, Public representative
107. Richard Lindsay, QC, Lawyer
108. Thomas Fellhauer, Chair
109. Jeff Campbell, QC
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113. Mark Rushton
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116. James E. Dorsey, QC, Lawyer
117. June Preston, Public representative
118. Herman Van Ommen, QC, Chair
119. Carol Gibson, Public representative
120. Peter Warner, QC, Lawyer

Vanessa Lauren de Jong | *Decision on Application for Call and Admission*

2017 LSBC 44 Decision issued : December 12 , 2017 Oral reasons : November 9 , 2017 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning VANESSA LAUREN DE JONG APPLICANT DECISION OF THE HEARING PANEL ON AN APPLICATION FOR CALL AND A... [Summary](#) | [Read full decision](#)

John Waddell, QC, Chair Paula Cayley, Public representative Brook Greenberg, Bench

Darryl Wayne Larson | *Decision of the Hearing Panel*

2017 LSBC 43 Decision issued : December 6 , 2017 Oral reasons : September 22 , 2017 Citation issued : January 5 , 2017 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning DARRYL WAYNE LARSON RESPONDENT DECISION OF THE HEARING PANE... [Summary](#) | [Read full decision](#)

Jamie Maclaren, Chair Dr. Gail Bellward, Public representative Carol W. Hickman, QC, Lawyer

3.

Donald Franklin Gurney | *Decision on Costs*

2017 LSBC 42 Decision issued : November 24 , 2017 Citation issued : May 9 , 2016 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning DONALD FRANKLIN GURNEY RESPONDENT DECISION OF THE HEARING PANEL ON COSTS Written submissions rece... [Summary](#) | [Read full decision](#)

Phil Riddell, Chair Gillian M. Dougans, Lawyer

4.

Gerhardus Albertus Pyper | *Decision on a Motion to Dismiss the Citation*

2017 LSBC 41 Decision issued : November 10 , 2017 Citation issued : March 23 , 2015 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning GERHARDUS ALBERTUS PYPER RESPONDENT DECISION OF THE HEARING PANEL ON A MOTION TO DISMISS THE C... [Summary](#) | [Read full decision](#)

Phil Riddell, Chair Gillian M. Dougans, Lawyer

5.

Sumit Ahuja | *Decision on Facts, Determination and Disciplinary Action*

2017 LSBC 39 Decision issued : October 31 , 2017 Citation issued : November 9 , 2016 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning SUMIT AHUJA RESPONDENT DECISION OF THE HEARING PANEL ON FACTS , DETERMINATION AND DISCIPLINAR... [Summary](#) | [Read full decision](#)

Herman Van Ommen, QC, Chair Dennis J. Day, Public Representative Gillian M. Dougans, Lawyer

6.

Glenford Emerson Greene | *Decision on Facts, Determination and Disciplinary Action*

2017 LSBC 38 Decision issued : October 30 , 2017 Citation issued : October 11 , 2016 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning GLENFORD EMERSON GREENE RESPONDENT DECISION OF THE HEARING PANEL ON FACTS , DETERMINATION AND... [Summary](#) | [Read full decision](#)

Gregory Petrisor, Chair Gavin Hume, QC, Lawyer Laura Nashman, Public representative

7.

Heather Catherine Cunningham | *Decision of the Hearing Panel on Facts, Determination, Disciplinary Action and Costs*

2017 LSBC 37 Decision issued : October 23 , 2017 Oral decision : June 16 , 2017 Citation issued : April 4 , 2017 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning HEATHER CATHERINE CUNNINGHAM RESPONDENT DECISION OF THE HEARING P... [Summary](#) | [Read full decision](#)

Thomas Fellhauer, Chair David Layton, QC, Lawyer Linda Michaluk, Public representative

8.

Daniel Clayton Gallant | *Decision on Costs*

2017 LSBC 36 Decision issued : October 19 , 2017 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning DANIEL CLAYTON GALLANT APPLICANT DECISION OF THE HEARING PANEL ON COSTS Panel : Nancy G . Merrill , Chair Lance J . Ollenberger , ... [Summary](#) | [Read full decision](#)

Nancy G. Merrill, Chair Lance J. Ollenberger, Public representative Peter D. Warner, QC, Lawye

9.

Gerhardus Albertus Pyper | *Decision on Disciplinary Action*

2017 LSBC 35 Decision issued : October 2 , 2017 Citation issued : March 23 , 2015 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning GERHARDUS ALBERTUS PYPER RESPONDENT DECISION OF THE HEARING PANEL ON DISCIPLINARY ACTION Hearing... [Summary](#) | [Read full decision](#)

Herman Van Ommen, QC, Chair James Dorsey, QC, Lawyer Dan Goodleaf, Public Representative

10.

Christopher Roy Penty | *Agreed Statement of Facts*

Citation Authorized : April 6 , 2017 Citation Issued : April 20 , 2017 IN THE MATTER OF THE LEGAL PROFESSION ACT AND IN THE MATTER OF A HEARING CONCERNING CHRISTOPHER ROY PENTY RESPONDENT AGREED STATEMENT OF FACTS Member Background 1 . Christopher Roy Penty (the “ Respondent ”) was called and admi... [Summary](#) | [Read full decision](#)

N/A

11.

Malcolm Hassan Zoraik | *Decision on Facts and Determination - Court of Appeal pending*

2017 LSBC 34 Decision issued : September 26 , 2017 Citation issued : October 20 , 2016 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning MALCOLM HASSAN ZORAIAK RESPONDENT DECISION OF THE HEARING PANEL ON FACTS AND DETERMINATION H... [Summary](#) | [Read full decision](#)

Sharon Matthews, QC, Chair Satwinder Bains, Public representative Sandra Weafer, Lawyer

12.

Re: Lawyer 17 | *Decision on an Application for an Oral Hearing on Costs*

2017 LSBC 33 Decision issued : September 18 , 2017 Citation issued : May 5 , 2016 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c .

9 and a hearing concerning LAWYER 17 RESPONDENT DECISION OF THE HEARING PANEL ON AN APPLICATION FOR AN ORAL HEARING ON COST... [Summary](#) | [Read full decision](#)

Philip A. Riddell, Chair Don Amos, Public representative Shona A. Moore, QC, Lawyer

13.

Donald Franklin Gurney | *Decision on Disciplinary Action*

2017 LSBC 32 Decision issued : September 1 , 2017 Citation issued : May 9 , 2016

CORRECTED DECISION : PARAGRAPH [65] (1) OF THE DECISION WAS AMENDED ON SEPTEMBER 6 , 2017 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning DON... [Summary](#) | [Read full decision](#)

Phil Riddell, Chair Gillian M. Dougans, Lawyer

14.

Leonides Tungohan | *Decision on an Application for Extension of Time*

2017 LSBC 31 Decision issued : August 30 , 2017 Citation issued : October 8 , 2013 THE LAW

SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c .

9 and a Section 47 Review concerning LEONIDES TUNGOHAN APPLICANT DECISION OF THE REVIEW BOARD ON AN APPLICATION FOR EXTENS... [Summary](#) | [Read full decision](#)

Greg Petrisor, Chair Don Amos, Public representative Jeff Campbell, QC Woody Hayes Carol Hickman, QC, Lawyer John Hogg, QC, Lawyer Linda Michaluk, Public representative

15.

Robert Collingwood Strother | *Decision of the Benchers on Costs*

2017 LSBC 30 Decision issued : August 16 , 2017 Citation issued : September 8 , 2009 THE

LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC

1998 , c . 9 and a s . 47 Review concerning ROBERT COLLINGWOOD STROTHER

APPLICANT DECISION OF THE BENCHERS ON COSTS Written submiss... [Read full decision](#)

Philip Riddell, Chair Pinder Cheema, QC Craig Ferris, QC Steven McKoen Elizabeth Rowbotham Sarah Westwood

16.

Kenneth Joseph Spears | *Decision on Facts and Determination*

2017 LSBC 29 Decision issued : August 4 , 2017 Citation issued : July 15 , 2016 NOTE : On

September 28 , 2017 the Discipline Committee considered and accepted a proposal under Rule 4

- 29 . Under the proposal , the Respondent admitted professional misconduct as found by the Hearing Panel , obtained... [Summary](#) | [Read full decision](#)

Bruce A. LeRose, QC, Chair Mark Rushton, Public representative Michelle Stanford, Benchers

17.

Re Applicant 10 | *Summary of Decision on Application for Non-Disclosure*

Applicant 10 Written submissions on application for non - disclosure : March 13 and 20 , 2017
Panel : Gregory Petrisor , Chair , William Everett , QC and Thelma Siglos Decision issued :
August 1 , 2017 (2017 LSBC 28) Counsel : Jean P . Whittow , QC for the Law Society ; Applicant
10 on his own beh... [Read full decision](#)

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

18.

Gerhardus Albertus Pyper | *Decision on Preliminary Application Regarding Jurisdiction and Bias*

2017 LSBC 27 Decision issued : July 31 , 2017 Citation issued : February 11 , 2015 THE LAW
SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c .
9 and a hearing concerning GERHARDUS ALBERTUS PYPER RESPONDENT DECISION OF
THE HEARING PANEL ON PRELIMINARY APPLICATION RE... [Summary](#) | [Read full decision](#)

Nancy Merrill, QC, Chair Joost Blom, QC, Lawyer Robert Smith, Public representative

19.

Sumit Ahuja | *Decision on Facts, Determination and Disciplinary Action*

2017 LSBC 26 Decision issued : July 6 , 2017 Citation issued : November 9 , 2016 THE LAW
SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c .
9 and a hearing concerning SUMIT AHUJA RESPONDENT DECISION OF THE HEARING
PANEL ON FACTS , DETERMINATION AND DISCIPLINARY AC... [Summary](#) | [Read full decision](#)

Craig A.B. Ferris, QC, Chair Ralston S. Alexander, QC, Lawyer Don Amos, Public representative

Gregory Louis Samuels | *Decision on Disciplinary Action*

2017 LSBC 25 Decision issued : June 29 , 2017 Citation issued : February 10 , 2016 THE LAW
SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c .
9 and a hearing concerning GREGORY LOUIS SAMUELS RESPONDENT DECISION OF
THE HEARING PANEL ON DISCIPLINARY ACTION Hearing d... [Summary](#) | [Read full decision](#)

Herman Van Ommen, QC, Chair Carol Gibson, Public representative Peter D. Warner, QC, Lawyer

21.

Robert Collingwood Strother | *Decision of a Review Panel of the Benchers - s. 48 Court of Appeal pending*

2017 LSBC 23 Decision issued : June 26 , 2017 Citation issued : September 8 , 2009 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a section 47 Review concerning ROBERT COLLINGWOOD STROTHER APPLICANT DECISION OF A REVIEW PANEL OF THE BENCHERS Revi... [Summary](#) | [Read full decision](#)

Philip Riddell, Chair Pinder Cheema, QC Craig Ferris, QC Steven McKoen Elizabeth Rowbotham Sarah Westwood

22.

Daniel Clayton Gallant | *Decision on Application for Enrolment*

2017 LSBC 21 Decision issued : June 13 , 2017 THIS DECISION HAS BEEN REDACTED BY ORDER OF THE EXECUTIVE DIRECTOR UNDER RULE 2 - 103 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning DANIEL CLAYTON GALLANT APPLICANT DECISION OF T... [Summary](#) | [Read full decision](#)

Nancy G. Merrill, Chair Lance J. Ollenberger, Public representative Peter D. Warner, QC, Lawyer

23.

Houtan Sanandaji | *Decision on Application for Enrolment*

2017 LSBC 20 Decision issued : June 8 , 2017 Oral decision : March 8 , 2017 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning HOUTAN SANANDAJI APPLICANT DECISION OF THE HEARING PANEL ON APPLICATION FOR ENROLMENT Hearing dates :... [Summary](#) | [Read full decision](#)

24.

Leonides Tungohan | *Decision of the Review Board on Clarification and Costs*

2017 LSBC 19 Decision issued : May 30 , 2017 Citation issued : May 29 , 2013 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a Section 47 Review concerning LEONIDES TUNGOHAN RESPONDENT DECISION OF THE REVIEW BOARD ON CLARIFICATION AND COSTS Submis... [Summary](#) | [Read full decision](#)

Greg Petrisor, Chair Don Amos, Public representative Jeff Campbell, QC, Benchers Woody Hayes, Benchers Carol Hickman, QC, Lawyer John Hogg, QC, Lawyer Linda Michaluk, Public representative

25.

Pir Indar Paul Singh Sahota | *Decision on Disciplinary Action - s. 47 review pending* 2017

LSBC 18 Decision issued : May 30 , 2017 Citation issued : May 11 , 2015 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c .

9 and a hearing concerning PIR INDAR PAUL SINGH SAHOTA RESPONDENT DECISION OF THE HEARING PANEL ON DISCIPLINARY ACTION Hearing d... [Summary](#) | [Read full decision](#)

Phil Riddell, Chair Ralston S. Alexander, QC, Lawyer Glenys Blackadder, Public representative

26.

Terrance Edward Hudson | *Decision of the Hearing Panel*

2017 LSBC 17 Decision issued : May 29 , 2017 Citation issued : October 6 , 2016 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning TERRANCE EDWARD HUDSON RESPONDENT DECISION OF THE HEARING PANEL Hearing date : April 21 , 2017 Pan... [Summary](#) | [Read full decision](#)

James E. Dorsey, QC, Chair Jeff Campbell, QC, Lawyer Carol Gibson, Public representative

27.

Donald Franklin Gurney | *Decision on Facts and Determination*

2017 LSBC 15 Decision issued : May 18 , 2017 Citation issued : May 9 , 2016 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning DONALD FRANKLIN GURNEY RESPONDENT DECISION OF THE HEARING PANEL ON FACTS AND DETERMINATION Hearing dat... [Summary](#) | [Read full decision](#)

James E. Dorsey, QC, Chair Jeff Campbell, QC, Lawyer Carol Gibson, Public representative

28.

Kevin Alexander McLean | *Decision on an Application to Dismiss the Review*

2017 LSBC 13 Decision issued : May 1 , 2017 Citation issued : October 7 , 2014 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a s . 47 Review concerning KEVIN ALEXANDER MCLEAN RESPONDENT DECISION OF THE PRESIDENT'S DESIGNATE ON AN APPLICATION TO... [Summary](#) | [Read full decision](#)

Dean Lawton, QC

29.

Peter Krogh Jensen | *Decision of the Benchers on Costs*

2017 LSBC 11 Report issued : April 20 , 2017 Citation issued : August 25 , 2011 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a section 47 review concerning PETER KROGH JENSEN RESPONDENT DECISION OF THE BENCHERS ON COSTS Submissions received : D... [Summary](#) | [Read full decision](#)

Gregory Petrisor, Chair John S. Hayes Jamie Maclaren C.E. Lee Ongman Elizabeth Rowbotham Sarah Westwood

30.

Re Lawyer 17 | *Decision on Facts and Determination*

2017 LSBC 10 Decision issued : April 10 , 2017 Citation issued : May 5 , 2016 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning LAWYER 17 RESPONDENT DECISION OF THE HEARING PANEL ON FACTS AND DETERMINATION Hearing dates : Septem... [Summary](#) | [Read full decision](#)

Philip A. Riddell, Chair Don Amos, Public representative Shona A. Moore, QC, Lawyer

31.

Heather Catherine Cunningham | *Decision on Facts, Determination, Disciplinary Action and Costs*

DM1496669 2017 LSBC 09 Decision issued : April 5 , 2017 Oral reasons : February 3 , 2017 Citation issued : November 8 , 2016 CORRECTED DECISION : PARAGRAPHS [24] AND [45] OF THIS DECISION WERE AMENDED ON JUNE 15 , 2017 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act... [Summary](#) | [Read full decision](#)

Jamie Maclaren Single Bencher Panel

32.

Catherine Ann Sas | *Decision of the Review Board*

2017 LSBC 08 Decision issued : March 31 , 2017 Citation issued : August 1 , 2013 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning CATHERINE ANN SAS , QC APPLICANT DECISION OF THE REVIEW BOARD Review date : January 23 , 2017 Rev... [Summary](#) | [Read full decision](#)

Jasmin Z. Ahmad, Chair William Everett, QC, Lawyer Lisa Hamilton, Benchers Thelma Siglos, Public representative Robert Smith, Public representative B. William Sundhu, Lawyer Sarah Westwood, Benchers

33.

Re Applicant 11 | *Decision on Applications concerning Anonymous Publication, Sealing of Certain Information and costs*

NOTE : Portions of this decision have been redacted by order of the Hearing Panel under Rule 2 - 104 (3) 2017 LSBC 07 Decision issued : March 20 , 2017 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning APPLICANT 11 APPLICANT D... [Summary](#) | [Read full decision](#)

Bruce LeRose, QC, Chair Graeme Roberts, Public representative Brook Greenberg, Benchers

34.

Re Applicant 10 | *Summary of Decision on Application for Call and Admission*

Applicant 10 Hearing (application for enrolment) : September 8 - 9 and November 5 - 6 , 2015 , January 11 - 12 and April 21 , 2016 Panel : Gregory Petrisor , Chair , William Everett , QC and Thelma Siglos Decision issued : February 27 , 2017 (2017 LSBC 06) Counsel : Jean P . Whittow , QC for the...[Read full decision](#)

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

35.

Kerri Margaret Farion | *Decision on Facts, Determination, Disciplinary Action and Costs*
2017 LSBC 05 Decision issued : February 9 , 2017 Citation issued : June 16 , 2016 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning KERRI MARGARET FARION RESPONDENT DECISION OF THE HEARING PANEL ON FACTS , DETERMINATION , DISCIP... [Summary](#) | [Read full decision](#)

Dean Lawton, QC, Chair Dr. Gail Bellward, Public representative Richard Lindsay, QC, Lawyer

36.

William Terrance Faminoff | *Decision of a Review Board*
2017 LSBC 04 Decision issued : January 26 , 2017 Citation issued : February 25 , 2013 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a section 47 Review concerning WILLIAM TERRENCE FAMINOFF RESPONDENT DECISION OF A REVIEW BOARD Review dates : Mar... [Summary](#) | [Read full decision](#)

Thomas Fellhauer, Chair Jeff Campbell, QC J.S. (Woody) Hayes Sharon Matthews, QC Steven McKoen Mark Rushton Sarah Westwood

37.

Michael John Butterfield | *Decision of the Hearing Panel*
2017 LSBC 02 Decision issued : January 19 , 2017 Citation issued : February 10 , 2016 Citation amended : December 8 , 2016 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning MICHAEL JOHN BUTTERFIELD RESPONDENT DECISION OF THE HEA... [Summary](#) | [Read full decision](#)

C.E. Lee Ongman, Chair James E. Dorsey, QC, Lawyer June Preston, Public representative

38.

Gregory Louis Samuels | *Decision on Facts and Determination*
2017 LSBC 01 Decision issued : January 16 , 2017 Citation issued : February 10 , 2016 and amended June 1 , 2016 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning GREGORY LOUIS

SAMUELS RESPONDENT DECISION OF THE HEARING PANEL ON... [Summary](#) | [Read full decision](#)

Herman Van Ommen, QC, Chair Carol Gibson, Public representative Peter Warner, QC, Lawyer

2016 LSBC DISCIPLINE DECISIONS

Discipline Committee composition

[Discipline Reviews opinions concerning lawyers or articulated students which are referred by Law Society staff, the Complainants' Review Committee or the Practice Standards Committee and determines appropriate disciplinary outcomes, if any.]

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2. Claude Richmond (Vice-Chair)
3. David Crossin, QC
4. Brook Greenberg
5. Christopher McPherson
6. Tony Wilson, QC

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7. Tracey Cohen, QC
8. Jeevyn Dhaliwal

STAFF CONTACT Deborah Armour CONFLICTS

-2016 (1)

1. Tony Wilson, Chair – Kevin Alexander McLean - 2016 LSBC 10

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99. Patrick Kelly, Public representative
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102. Dean Lawton

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124. Dan E. Goodleaf, Public representative
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128. Phil Riddell, Chair
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130. Glenys Blackadder, Public representative
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133. Glenys Blackadder, Public representative
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137. Lee Ongman
138. Herman Van Ommen, QC, Chair
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144. Steven McKoen
145. Philip Riddell

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151. Woody Hayes, Bench
152. Carol Hickman, QC, Lawyer
153. John Hogg, QC, Lawyer
154. Linda Michaluk, Public representative
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156. Woody Hayes, Public representative
157. Bruce LeRose, QC, Lawyer
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162. Dean Lawton
163. Jamie Maclaren
164. Nancy Merrill, QC
165. Gregory Petrisor
166. Carolynn Ryan
167. Michelle Sanford

1.

Charles Louis Albas | *Decision on Facts and Determination*

2016 LSBC 18 Decision issued : May 30 , 2016 Citation issued : June 24 , 2015 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning CHARLES LOUIS ALBAS RESPONDENT DECISION OF THE HEARING PANEL ON FACTS AND DETERMINATION Hearing date... [Summary](#) | [Read full decision](#)

Martin Finch, QC, Chair Dan Goodleaf, Public representative Bruce LeRose, QC, Lawyer

2.

Charles Louis Albas | *Decision on Disciplinary Action and Costs*

2016 LSBC 36 Decision issued : October 31 , 2016 Citation issued : June 24 , 2015 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning CHARLES LOUIS ALBAS RESPONDENT DECISION OF THE HEARING PANEL ON DISCIPLINARY ACTION AND COSTS He... [Summary](#) | [Read full decision](#)

Martin Finch, QC, Chair Dan Goodleaf, Public representative Bruce LeRose, QC, Lawyer

3.

Re Applicant 9 | *Decision on Application for Enrolment*

2016 LSBC 14 Decision issued : April 25 , 2016 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning APPLICANT 9 APPLICANT DECISION OF THE HEARING PANEL ON APPLICATION FOR ENROLMENT Hearing dates : December 15 , 16 , 2015 and Februa...[Summary](#) | [Read full decision](#)

Jamie Maclaren, Chair Dr. Gail Bellward, Public representative Sandra Weafer, Lawyer

4.

Susan Margaret Ben-Oliel | *Decision on Facts, Determination, Disciplinary Action and Costs*
2016 LSBC 31 Decision issued : September 2 , 2016 Oral reasons : June 9 , 2016 Citation issued : January 19 , 2016 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning SUSAN MARGARET BEN - OLIEL RESPONDENT DECISION OF THE HEARING P...[Summary](#) | [Read full decision](#)

Lynal Doerksen, Chair Dennis Day, Public representative Carol Hickman, QC, Lawyer

5.

Susan Margaret Ben-Oliel | *Decision on Facts, Determination, Disciplinary Action and Costs*
2016 LSBC 35 Decision issued : October 4 , 2016 Citation issued : July 20 , 2016 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning SUSAN MARGARET BEN - OLIEL RESPONDENT DECISION OF THE HEARING PANEL ON FACTS , DETERMINATION , DI... [Summary](#) | [Read full decision](#)

Phil Riddell, ChairCarolynn Ryan, Public representative Peter Warner, QC, Lawyer

6.

Susan Margaret Ben-Oliel | *Decision on Facts, Determination, Disciplinary Action and Costs*
2016 LSBC 40 Decision issued : November 23 , 2016 Oral decision on Facts and Determination : October 21 , 2016 Citation issued : August 18 , 2016 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning SUSAN MARGARET BEN - OLIEL RESPO... [Summary](#) | [Read full decision](#)

Thomas Fellhauer, Chair Paula Cayley, Public representative David Layton, Lawyer

7.

Susan Margaret Ben-Oliel | *Decision on Facts, Determination, Disciplinary Action and Costs*
2016 LSBC 42 Decision issued : November 28 , 2016 Citations issued : June 24 , 2016 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC

1998 , c . 9 and a hearing concerning SUSAN MARGARET BEN - OLIEL RESPONDENT
DECISION OF THE HEARING PANEL ON FACTS , DETERMINATION ,... [Summary](#) | [Read full decision](#)

Martin Finch, QC, Chair Ralston S. Alexander, QC, Lawyer Linda Michaluk, Public representative

8.

Pamela Suzanne Boles | *Decision on Facts and Determination - Section 47 Review concluded*
2016 LSBC 02 Report issued : January 14 , 2016 Citation issued : December 22 , 2010 THE
LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC
1998 , c . 9 and a hearing concerning PAMELA SUZANNE BOLES RESPONDENT
DECISION OF THE HEARING PANEL ON FACTS AND DETERMINATION
Heari... [Summary](#) | [Read full decision](#)

Bruce LeRose, QC, Chair Ralston S. Alexander, QC, Lawyer Clayton G. Shultz, FCA, Public representative

9.

Pamela Suzanne Boles | *Decision on Application to Introduce Fresh Evidence*
2016 LSBC 32 Decision issued : September 23 , 2016 Citation issued : December 22 , 2010 THE
LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC
1998 , c . 9 and a Section 47 Review concerning PAMELA SUZANNE BOLES RESPONDENT
DECISION OF THE BENCHERS ON AN APPLICATION TO IN... [Summary](#) | [Read full decision](#)

Gregory Petrisor, Chair Jeff Campbell, QC Lisa Hamilton Dean Lawton Sharon Matthews, QC
Steven McKoen Mark Rushton

10.

Pamela Suzanne Boles | *Decision of a Review Panel of the Benchers*
2016 LSBC 48 Decision issued : December 28 , 2016 Citation issued : December 22 , 2010 THE
LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC
1998 , c . 9 and a hearing concerning PAMELA SUZANNE BOLES RESPONDENT
DECISION OF A REVIEW PANEL OF THE BENCHERS Review dates : S... [Summary](#) | [Read full decision](#)

Gregory Petrisor, Chair Jeff Campbell, QC Lisa Hamilton Dean Lawton, QC Sharon D. Matthews,
QC Steven McKoen Mark Rushton

11.

Shirley Chu | *Decision on Facts, Determination, Disciplinary Action and Costs*
2016 LSBC 30 Decision issued : September 2 , 2016 Oral reasons on Facts and Determination :

June 21 , 2016 Citation issued : January 19 , 2016 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning SHIRLEY CHU RESPONDENT DECISION OF...[Summary](#) | [Read full decision](#)

Elizabeth J. Rowbotham, Chair Jasmin Z. Ahmad, Lawyer Robert Smith, Public Representative

12.

Gavin Clark Crickmore | *Decision on Facts, Determination, Disciplinary Action and Costs* 2016 LSBC 16 Decision issued : May 20 , 2016 Oral reasons on Facts , Determination and Disciplinary Action : December 15 , 2015 Citation issued : August 27 , 2015 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning GAVIN CLARK CRI... [Summary](#) | [Read full decision](#)

Elizabeth Rowbotham, Chair Donald Amos, Public representative Shona A. Moore, QC, Lawyer

13.

Melissa Ann Daniels | *Decision on Facts, Determination, Disciplinary Action and Costs* 2016 LSBC 17 Decision issued : May 27 , 2016 Citation issued : September 30 , 2015 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning MELISSA ANN DANIELS RESPONDENT DECISION OF THE HEARING PANEL ON FACTS , DETERMINATION , DISCIPL... [Summary](#) | [Read full decision](#)

Nancy Merrill, QC, Chair Lance Ollenberger, Public representative Donald Silversides, QC, Lawyer

14.

Douglas Edward Dent | *Decision on Disciplinary Action and Cost* 2016 LSBC 05 Decision issued : February 12 , 2016 Citation issued : July 10 , 2014 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning DOUGLAS EDWARD DENT RESPONDENT DECISION OF THE HEARING PANEL ON DISCIPLINARY ACTION AND COSTS H... [Summary](#) | [Read full decision](#)

David Mossop, QC, Chair Bruce LeRose, QC, Lawyer Clayton Shultz, Public representative

15.

Kerri Margaret Farion | *Decision on Facts, Determination, Disciplinary Action and Costs* 2016 LSBC 25 Decision issued : June 21 , 2016 Oral reasons : May 13 , 2016 Citation issued : March 4 , 2016 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning KERRI MARGARET FARION RESPONDENT DECISION OF THE HEARING PANEL ON FACT...[Summary](#) | [Read full decision](#)

Craig A.B. Ferris, QC, Chair June Preston, Public representative Sandra E. Weafer, Lawyer

16.

Donald Franklin Gurney | *Decision on an Application for Disclosure of the Circumstances*
2016 LSBC 39 Decision issued : November 23 , 2016 Citation issued : May 9 , 2016 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and an application under Rule 4 - 35 concerning DONALD FRANKLIN GURNEY RESPONDENT DECISION OF THE PRESIDENT'S DESIGNATE ON... [Summary](#) | [Read full decision](#)

Nancy Merrill, QC

17.

Thomas Paul Harding | *Decision of the Hearing Panel*
2016 LSBC 09 Report issued : February 23 , 2016 Citation issued : February 11 , 2015 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning THOMAS PAUL HARDING RESPONDENT DECISION OF THE HEARING PANEL Hearing date : November 26 , 201... [Summary](#) | [Read full decision](#)

Thomas Fellhauer, Chair David Layton, Lawyer Linda Michaluk, Public representative

18.

Tracey Lynn Jackson | *Decision on Disciplinary Action and Costs*
2016 LSBC 27 Decision issued : June 27 , 2016 Citation issued : November 10 , 2014 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning TRACEY LYNN JACKSON RESPONDENT DECISION OF THE HEARING PANEL ON DISCIPLINARY ACTION AND COSTS H... [Summary](#) | [Read full decision](#)

Herman Van Ommen, QC, Chair Woody Hayes, Public representative Gavin Hume, QC, Lawyer

19.

Peter Krogh Jensen | *Decision of a Review Panel of the Benchers*
2016 LSBC 37 Decision issued : November 4 , 2016 Citation issued : August 25 , 2011 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a s . 47 Review concerning PETER KROGH JENSEN RESPONDENT DECISION OF A REVIEW PANEL OF THE BENCHERS Review date : M...[Summary](#) | [Read full decision](#)

Gregory Petrisor, Chair Lynal Doerksen Woody Hayes Jamie Maclaren Lee Ongman Elizabeth Rowbotham Sarah Westwood

20.

Krista Margret Jessacher | *Decision on Facts, Determination, Disciplinary Action and Costs*
2016 LSBC 11 Decision issued : March 18 , 2016 Oral reasons on Facts and Determination :
February 4 , 2016 Citation issued : October 9 , 2015 THE LAW SOCIETY OF BRITISH
COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing
concerning KRISTA MARGRET JESSACHER RESPONDENT...[Summary](#) | [Read full decision](#)

Pinder K. Cheema, QC, Chair Gavin Hume, QC, Lawyer Graeme Roberts, Public representative

21.

Martin Drew Johnson | *Decision of the Benchers on Review - Court of Appeal pending* 2016
LSBC 20 Decision issued : May 31 , 2016 Citation issued : February 21 , 2012 THE LAW
SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c .
9 and a section 47 review concerning MARTIN DREW JOHNSON RESPONDENT DECISION
OF THE BENCHERS ON REVIEW Review date : March... [Summary](#) | [Read full decision](#)

Majority decision: Lynam E. Doerksen, Chair Satwinder Bains J.S. (Woody) Hayes Dean P.J.
Lawton C.E. Lee Ongman Carolyn Ryan Dissent decision Jamie MacLaren

22.

Re: Lawyer 15 | *Decision on Facts and Determination*
2016 LSBC 28 Decision issued : July 19 , 2016 Citation issued : October 9 , 2014 THE LAW
SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c .
9 and a hearing concerning LAWYER 15 RESPONDENT DECISION OF THE HEARING
PANEL ON FACTS AND DETERMINATION Hearing dates : Sep... [Summary](#) | [Read full decision](#)

Pinder K. Cheema, QC, Chair Bruce LeRose, QC, Lawyer Lance Ollenberger, Public representative

23.

Re Lawyer 16 | *Decision of the Hearing Panel on Facts and Determination*
2016 LSBC 47 Decision issued : December 28 , 2016 Citation issued : December 18 , 2015 THE
LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC
1998 , c . 9 and a hearing concerning LAWYER 16 RESPONDENT DECISION OF THE
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Bruce LeRose, QC, Chair Thelma Siglos, Public representative Michelle D. Stanford, Benchers

24.

Joseph Harry McCarthy | *Decision of the Hearing Panel*
2016 LSBC 23 Decision issued : June 14 , 2016 Oral reasons : April 14 , 2016 Citation issued :
July 15 , 2015 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal
Profession Act , SBC 1998 , c . 9 and a hearing concerning JOSEPH HARRY MCCARTHY

RESPONDENT DECISION OF THE HEARING PANEL Heari...[Summary](#) | [Read full decision](#)

Nancy Merrill, QC, Chair James Dorsey, QC, Lawyer Lois Serwa, Public representative

25.

Kevin Alexander McLean | *Decision of Review Board on Jurisdiction to Review*

2016 LSBC 04 Decision issued : January 27 , 2016 Citation issued : November 19 , 2013 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a section 47 review concerning KEVIN ALEXANDER MCLEAN

RESPONDENT DECISION OF THE REVIEW BOARD ON JURISDICTION

TO... [Summary](#) | [Read full decision](#)

Lee Ongman, Chair Satwinder Bains, Benchers Dean Lawton, Benchers John Lane, Public representative Graeme Roberts, Public representative John Waddell, QC, Lawyer Sandra Weafer, Lawyer

26.

Kevin Alexander McLean | *Decision on Disciplinary Action and Costs - s. 47 review pending*

2016 LSBC 06 Decision issued : February 12 , 2016 Citation issued : October 7 , 2014 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning KEVIN ALEXANDER MCLEAN

RESPONDENT DECISION OF THE HEARING PANEL ON DISCIPLINARY ACTION AND

CO... [Summary](#) | [Read full decision](#)

Pinder K. Cheema, QC, Chair

27.

Kevin Alexander McLean | *Decision of the Review Board*

2016 LSBC 10 Decision issued : March 15 , 2016 Citation issued : April 25 , 2014 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c .

9 and a section 47 review concerning KEVIN ALEXANDER MCLEAN

RESPONDENT DECISION OF THE REVIEW BOARD Review date : September... [Summary](#) | [Read full](#)

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Tony Wilson, Chair Don Amos, Public representative Lynal Doerksen, Benchers John Hogg, QC, Lawyer Patrick Kelly, Public representative Dean Lawton, Benchers Donald Silversides, QC, Lawyer

28.

Kevin Alexander McLean | *Decision on an Application to Dismiss the Review*

2016 LSBC 33 Decision issued : September 27 , 2016 Citation issued : October 21 , 2014 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC

1998 , c . 9 and a Section 47 Review concerning KEVIN ALEXANDER MCLEAN

RESPONDENT DECISION OF THE PRESIDENT'S DESIGNATE ON AN

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Dean Lawton

29.

Michael Saul Menkes | *Decision of the Hearing Panel*

2016 LSBC 24 Decision issued : June 20 , 2016 Oral reasons : May 10 , 2016 Citation issued : September 30 , 2015 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning MICHAEL SAUL MENKES RESPONDENT DECISION OF THE HEARING PANEL Hear...[Summary](#) | [Read full decision](#)

Pinder K. Cheema, QC, Chair Shona A. Moore, QC, Lawyer Graeme Roberts, Public representative

30.

Diep Thanh Hoang Nguyen | *Decision of the Review Board*

2016 LSBC 21 Decision issued : June 9 , 2016 Citation issued : November 10 , 2014 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a section 47 review concerning DIEP THANH HOANG NGUYEN APPLICANT DECISION OF THE REVIEW BOARD Review date : April 7 , ... [Summary](#) | [Read full decision](#)

Lee Ongman, Chair Paula Cayley, Public representative Lynal Doerksen, Benchers Carol Gibson, Public representative David Layton, Lawyer Sharon Matthews, QC, Benchers William Sundhu, Lawyer

31.

Ronald Wayne Perrick | *Decision of the Review Board - Suspension stayed pending Court of Appeal*

2016 LSBC 43 Decision issued : November 29 , 2016 Citation issued : October 8 , 2013 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a review hearing concerning RONALD WAYNE PERRICK APPLICANT DECISION OF THE REVIEW BOARD Review date : September 15... [Summary](#) | [Read full decision](#)

Gregory Petrisor, Chair Jeff Campbell, QC, Benchers Gavin Hume, QC, Lawyer Dean Lawton, Benchers Laura Nashman, Public representative Lance Ollenberger, Public representative

32.

Gerhardus Albertus Pyper | *Decision on Facts and Determination*

2016 LSBC 01 Decision issued : January 11 , 2016 Citation issued : March 23 , 2015 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning GERHARDUS ALBERTUS PYPER RESPONDENT DECISION

OF THE HEARING PANEL ON FACTS AND DETERMINATION He... [Summary](#) | [Read full decision](#)

Herman Van Ommen, QC, Chair James Dorsey, QC, Lawyer Dan E. Goodleaf, Public representative

33.

Gerhardus Albertus Pyper | *Decision on Adjournment of Notice of Motion*

2016 LSBC 08 Decision issued : February 17 , 2016 Oral reasons : January 25 , 2016 Citation issued : March 23 , 2015 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning GERHARDUS ALBERTUS PYPYER RESPONDENT DECISION OF THE HEARING P...[Read full decision](#)

Herman Van Ommen, QC, Chair James Dorsey, QC, Lawyer Dan E. Goodleaf, Public representative

34.

Gerhardus Albertus Pyper | *Decision on an Application for Declarations*

2016 LSBC 22 Decision issued : June 9 , 2016 Oral reasons : April 22 , 2016 Citation issued : March 23 , 2015 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning GERHARDUS ALBERTUS PYPYER RESPONDENT DECISION OF THE HEARING PANEL ON...[Summary](#) | [Read full decision](#)

Herman Van Ommen, QC, Chair James Dorsey, QC Dan E. Goodleaf, Public representative

35.

Ian David Reith | *Decision of the Hearing Panel*

2016 LSBC 19 Decision issued : May 30 , 2016 Oral reasons on Facts and Determination : March 2 , 2016 Citation issued : March 16 , 2015 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning IAN DAVID REITH RESPONDENT DECISION OF THE... [Summary](#) | [Read full decision](#)

Phil Riddell, Chair Donald Amos, Public representative Richard Lindsay, QC, Lawyer

36.

Ian David Reith | *Decision on Application for Stay of an Order to Pay a Fine*

2016 LSBC 34 Decision issued : September 30 , 2016 Citation issued : March 16 , 2015 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning IAN DAVID REITH RESPONDENT DECISION OF THE PRESIDENT'S DESIGNATE ON AN APPLICATION FOR A STAY...[Summary](#) | [Read full decision](#)

Phil Riddell, Chair Ralston S. Alexander, QC, Lawyer Glenys Blackadder, Public representative

37.

Pir Indar Paul Singh Sahota | *Decision on Facts and Determination*

2016 LSBC 29 Decision issued : July 25 , 2016 Citation issued : May 11 , 2015 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning PIR INDAR PAUL SINGH SAHOTA RESPONDENT DECISION OF THE HEARING PANEL ON FACTS AND DETERMINATION Hear... [Summary](#) | [Read full decision](#)

Phil Riddell, Chair Ralston S. Alexander, QC, Lawyer Glenys Blackadder, Public representative

38.

Catherine Ann Sas | *Decision on Disciplinary Action and Costs*

2016 LSBC 03 Decision issued : January 25 , 2016 Citation issued : August 1 , 2013 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning CATHERINE ANN SAS , QC RESPONDENT DECISION OF THE HEARING PANEL ON DISCIPLINARY ACTION AND COST... [Summary](#) | [Read full decision](#)

Dean Lawton, Chair Dan Goodleaf, Public representative Donald Silversides, QC, Lawyer

39.

Catherine Ann Sas | *Decision on Application for Stay*

2016 LSBC 15 Decision issued : May 2 , 2016 Oral reasons : February 24 , 2016 Citation issued : August 1 , 2013 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a section 47 review concerning CATHERINE ANN SAS APPLICANT DECISION ON APPLICATION FOR...[Summary](#) | [Read full decision](#)

Lee Ongman

40.

James Leslie Straith | *Decision on Facts, Determination, Disciplinary Action and Costs* 2016

LSBC 13 Decision issued : April 1 , 2016 Oral reasons on Facts and Determination : February 1 , 2016 Citation issued : September 30 , 2015 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning JAMES LESLIE STRAITH RESPONDENT DE...[Summary](#) | [Read full decision](#)

Herman Van Ommen, QC, Chair Jasmin Z. Ahmad, Lawyer John Lane, Public representative

41.

Robert Collingwood Strother | *Decision of a Review Panel on an Application to Introduce Further Evidence*

2016 LSBC 46 Decision issued : December 22 , 2016 Citation issued : September 8 , 2009 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC

1998 , c . 9 and a s . 47 Review concerning ROBERT COLLINGWOOD STROTHER
APPLICANT DECISION OF A REVIEW PANEL OF BENCHERS ON AN AP... [Read full decision](#)

Thomas Fellhauer, Chair Pinder Cheema, QC Craig Ferris, QC Steven McKoen Philip Riddell
Elizabeth Rowbotham Sarah Westwood

42.

Leonides Tungohan | *Decision of the Review Board - Court of Appeal pending*

2016 LSBC 45 Decision issued : December 12 , 2016 Citation issued : May 29 , 2013 THE LAW
SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c .
9 and a s . 47 Review concerning LEONIDES TUNGOHAN APPLICANT DECISION OF THE
REVIEW BOARD Review date : March 16 , 2016 Rev...[Summary](#) | [Read full decision](#)

Gregory Petrisor, Chair Don Amos, Public representative Jeff Campbell, QC, Benchers Woody
Hayes, Benchers Carol Hickman, QC, Lawyer John Hogg, QC, Lawyer Linda Michaluk, Public
representative

43.

Maureen Joyce Wesley | *Decision on Disciplinary Action and Costs*

2016 LSBC 07 Decision issued : February 17 , 2016 Citation issued : April 23 , 2014 THE LAW
SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c .
9 and a hearing concerning MAUREEN JOYCE WESLEY RESPONDENT DECISION OF THE
HEARING PANEL ON DISCIPLINARY ACTION AND COSTS... [Summary](#) | [Read full decision](#)

Herman Van Ommen, QC, Chair Woody Hayes, Public representative Bruce LeRose, QC, Lawyer

44.

Malcolm Hassan Zoraik | *Decision of the Benchers*

2016 LSBC 26 Decision issued : June 24 , 2016 THE LAW SOCIETY OF BRITISH
COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a referral to the
Benchers under Rule 4 - 52 (former Rule 4 - 40) concerning MALCOLM HASSAN ZORAİK (
a former member of the Law Society) DECISION OF T... [Read full decision](#)

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Jamie Maclaren Nancy Merrill, QC Gregory Petrisor Carolyn Ryan Michelle Sanford

2015 DISCIPLINE DECISIONS

2015 LSBC Discipline Committee Decision

[Discipline Reviews opinions concerning lawyers or articulated students which are referred by Law Society staff, the Complainants' Review Committee or the Practice Standards Committee and determines appropriate disciplinary outcomes, if any.

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3. E. David Crossin, QC
4. Miriam Kresivo, QC
5. Peter B. Lloyd, FCPA, FCA
6. Gregory A. Petrisor
7. Claude Richmond

NON-BENCHER

8. Tracey Cohen

Conflicts of Interests -2015 (4)

1. Miriam Kresivo, QC, Chair - **Kevin Alexander McLean** - 2015 LSBC 09
2. Miriam Kresivo, QC, Chair - **Kevin Alexander McLean** - 2015 LSBC 30
3. Gregory Petrisor - **Lyle Daniel Perry** - 2015 LSBC 13
4. Gregory Petrisor - **Cameron John Pham** - 2015 LSBC 14

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3. Shona Moore, QC, Lawyer
4. Lynam Doerksen, Chair
5. Shona Moore, QC, Lawyer
6. Lois Serwa, Public representative
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8. Chair Ralston S. Alexander, QC
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11. Dr. Gail Bellward, Public representative
12. Richard B. Lindsay, QC, P. Eng., Lawyer
13. Thomas Fellhauer, Chair
14. Dr. Gail Bellward, Public representative
15. Richard B. Lindsay, QC, P. Eng., Lawyer
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20. Sharon Matthews, QC
21. Herman Van Ommen, QC 22. Tony Wilson
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25. Dennis Day, public representative
26. Dean Lawton, Bench
27. Elizabeth Rowbotham, Bench
28. Donald Silversides, QC, Lawyer
29. Sandra Weafer, Lawyer
30. David Mossop, QC, Chair
31. Bruce LeRose, QC, Lawyer
32. Clayton Shultz, Public Representative
33. Elizabeth Rowbotham, Chair
34. Paula Cayley, Public representative
35. Donald Silversides, QC, Lawyer
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51. Lynal Doerksen, Bench
52. Richard Lindsay, QC, Lawyer
53. Lois Serwa, Public representative
54. Tony Wilson, Bench
55. Dissent decision: Donald Silversides, QC, Lawye
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103. Robert Smith, Public representative
104. David Layton, Lawyer
105. Dean Lawton, Chair
106. Patrick Kelly, Public representative

107. Richard Lindsay, QC, Lawyer
108. W. Martin Finch, QC, Chair
109. Ralston S. Alexander, QC, Lawyer
110. Jory C. Faibish, Public representative
111. David Mossop, QC, Chair
112. J.S. Woody Hayes, Public representative
113. Gavin Hume, QC, Lawyer
114. David Mossop, QC, Chair
115. John M. Hogg, QC, Lawyer
116. Linda Michaluk, Public representative
117. Gregory Petrisor, Chair
118. Adam Eneas, Public representative
119. Shona Moore, QC, Lawyer
120. David W. Mossop, QC, Chair
121. Carol Gibson, Public representative
122. Peter D. Warner, QC, Lawyer
123. Lee Ongman, Chair
124. Lance Ollenberger, Public representative Brian J. Wallace, QC, Lawyer
125. Dean Lawton, Chair Dan Goodleaf, Public representative Donald Silversides, QC, Lawyer
126. Dean Lawton, Chair
127. Dan Goodleaf, Public representative
128. Donald Silversides, QC, Lawye
129. \David Mossop, QC, Chair
130. Carol J. Gibson, Public representative
131. David Layton, Lawyer
132. Gavin Hume, QC, Chair
133. Gregory Petrisor
134. Alan Ross
135. Gavin Hume, QC, Chair
136. Gregory Petrisor
137. Alan Ross
138. Miriam Kresivo, QC, Chair
139. Bruce LeRose, QC, Lawyer
140. Lois Serwa, Public representative
141. Miriam Kresivo, QC, Chair
142. Bruce LeRose, QC, Lawyer
143. Lois Serwa, Public representative
144. Lynal Doerksen, Chair
145. James Dorsey, QC, Lawyer
146. Martin Finch, QC, Bench
147. Sharon Matthews, QC, Bench
148. Laura Nashman, Public representative

149. Karen Nordlinger, QC, Lawyer
150. Lance Ollenberger, Public representative
151. Lynam Doerksen, Chair
152. James Dorsey, QC, Lawyer
153. Martin Finch, QC, Bench
154. Sharon Matthews, QC, Bench
155. Laura Nashman, Public representative
156. Karen Nordlinger, QC, Lawyer
157. Lance Ollenberger, Public representative
158. Sharon Matthews, QC
159. Lynam Doerksen
160. Haydn Acheson
161. Pinder Cheema, QC
162. Jamie MacLaren
163. Kenneth Walker, QC, Chair
164. Satwinder Bains
165. Elizabeth Rowbotham
166. Kenneth Walker, QC, Chair
167. Haydn Acheson
168. Satwinder Bains
169. Pinder Cheema, QC
170. Jamie MacLaren
171. Elizabeth Rowbotham
172. A. Cameron Ward (did not participate in the decision)
173. Lynam Doerksen, Chair
174. Graeme Roberts, Public representative
175. Sandra Weafer, Lawyer
176. Herman Van Ommen, QC, Chair
177. Woody Hayes, Public representative
178. Bruce LeRose, QC, Lawyer
179. Lee Ongman, Chair
180. Dan Goodleaf, Public representative
181. Carol Hickman, QC, Lawyer

2015 Decisions

1. Charles Louis Albas | *Decision of the Hearing Panel*

2015 LSBC 21 Decision issued : May 13 , 2015 Citation issued : October 8 , 2014 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning CHARLES LOUIS ALBAS RESPONDENT DECISION OF THE HEARING PANEL Hearing date : April 16 , 2015 Panel... Read full decision

Herman Van Ommen, QC, Chair Glenys Blackadder, Public representative Shona Moore, QC, Lawyer

2.

Re Applicant 8 | *Decision on Application for Enrolment*

2015 LSBC 23 Decision issued : June 1 , 2015 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning APPLICANT 8 APPLICANT DECISION OF THE HEARING PANEL ON APPLICATION FOR ENROLMENT Hearing dates : February 2 , 3 , 4 and 5 , 2015 Pane...Summary | Read full decision

N/A

3.

Grant David Axworthy | *Decision on Facts, Determination and Disciplinary Action*

2015 LSBC 46 Decision issued : October 27 , 2015 Oral reasons : September 23 , 2015 Citation issued : July 6 , 2015 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning GRANT DAVID AXWORTHY RESPONDENT DECISION OF THE HEARING PANEL...Summary | Read full decision

Lynal Doerksen, Chair Shona Moore, QC, Lawyer Lois Serwa, Public representativ

4.

Pamela Suzanne Boles | *Decision on Application to Quash Summonses*

2015 LSBC 27 Decision issued : June 18 , 2015 Citation issued : December 22 , 2010 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning PAMELA SUZANNE BOLES RESPONDENT DECISION OF THE HEARING PANEL ON AN APPLICATION TO QUASH SUMMON... Read full decision

Bruce LeRose, QC, Chair Ralston S. Alexander, QC Clayton Shultz, FCA

5.

John David Briner | *Decision on Facts and Determination*

2015 LSBC 11 Report issued : March 31 , 2015 Citation issued : July 18 , 2014 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning JOHN DAVID BRINER RESPONDENT DECISION OF THE HEARING PANEL ON FACTS AND DETERMINATION Hearing date :...Read full decision | *Trust Protection Coverage Payment*

Thomas Fellhauer, Chair Dr. Gail Bellward, Public representative Richard B. Lindsay, QC, P. Eng., Lawyer

6.

John David Briner | *Decision on Disciplinary Action*

2015 LSBC 53 Decision issued : November 30 , 2015 Citation issued : July 18 , 2014 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning JOHN DAVID BRINER RESPONDENT DECISION OF THE HEARING PANEL ON DISCIPLINARY ACTION Hearing date...Read full decision

Thomas Fellhauer, Chair Dr. Gail Bellward, Public representative Richard B. Lindsay, QC, P. Eng., Lawyer

7.

Vivian Pei-Hua Chiang | *Decision on Costs of Review*

2015 LSBC 31 Decision issued : July 3 , 2015 Citation issued : May 11 , 2007 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a section 47 review concerning VIVIAN CHIANG APPLICANT DECISION OF THE BENCHERS ON COSTS OF REVIEW Submissions received : ...Read full decision

David Mossop, QC, Chair Haydn Acheson Thomas Fellhauer Dean Lawton Sharon Matthews, QC Herman Van Ommen, QC Tony Wilson

8.

Douglas Edward Dent | *Decision of Review Board*

2015 LSBC 04 Report issued : February 5 , 2015 Citation issued : February 18 , 2013 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and section 47 review concerning DOUGLAS EDWARD DENT RESPONDENT DECISION OF THE REVIEW BOARD Review date : October 16 , ... Read full decision

Jan L. Lindsay, QC, Chair Don Amos, public representative Dennis Day, public representative Dean Lawton, Benchers Elizabeth Rowbotham, Benchers Donald Silversides, QC, Lawyer Sandra Weafer, Lawyer

9.

Douglas Edward Dent | *Decision on Facts and Determination*

2015 LSBC 37 Decision issued : July 24 , 2015 Citation Issued : July 10 , 2014 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning DOUGLAS EDWARD DENT RESPONDENT DECISION OF THE HEARING PANEL ON FACTS AND DETERMINATION Hearing date... Summary | Read full decision

David Mossop, QC, Chair Bruce LeRose, QC, Lawyer Clayton Shultz, Public Representative

10.

Philip Richard Derksen | *Decision of the Hearing Panel*

2015 LSBC 24 Decision issued : June 3 , 2015 Oral decision : February 20 , 2015 Citation issued : May 2 , 2014 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal

Profession Act , SBC 1998 , c . 9 and a hearing concerning PHILIP RICHARD DERKSEN
RESPONDENT DECISION OF THE HEARING PANEL Hea... Read full decision

Elizabeth Rowbotham, Chair Paula Cayley, Public representative Donald Silversides, QC, Lawyer

11.

William Terrance Faminoff | *Decision on Disciplinary Action*

2015 LSBC 20 Decision issued : April 28 , 2015 Citation issued : February 25 , 2013 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning WILLIAM TERRENCE FAMINOFF RESPONDENT DECISION OF THE HEARING PANEL ON DISCIPLINARY ACTION Hear... Summary | Read full decision

Nancy Merrill, Chair William Everett, QC, Lawyer Graeme Roberts, Public representative

12.

Patrick Michael Fitzmaurice | *Decision on Application for Anonymous Publication*

2015 LSBC 29 Decision issued : June 26 , 2015 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning PATRICK MICHAEL FITZMAURICE APPLICANT DECISION OF THE HEARING PANEL ON APPLICATION FOR ANONYMOUS PUBLICATION Submissions received da... Read full decision

Philip A. Riddell, Chair Jazmin Z. Ahmad, Lawyer Satwinder Bains, Public representative

13.

Stanley Chang Woon Foo | *Decision of the Benchers on Review*

2015 LSBC 34 Decision issued : July 9 , 2015 Citation issued : September 26 , 2012 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a section 47 review concerning STANLEY CHANG WOON FOO APPLICANT DECISION OF THE BENCHERS ON REVIEW Review date : Dec... Read full decision

Nancy Merrill, Chair Satwinder Bains Lynal Doerksen Martin Finch, QC Dean Lawton A. Cameron Ward Tony Wilson

14.

Thomas Paul Harding | *Decision on Disciplinary Action*

2015 LSBC 25 Decision issued : June 5 , 2015 Citation issued : February 22 , 2013 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning THOMAS PAUL HARDING RESPONDENT DECISION OF THE HEARING PANEL ON DISCIPLINARY ACTION Hearing date... Read full decision

Sharon Matthews, QC, Chair Ralston S. Alexander, QC, Lawyer John Lane, Public Representative

15.

Thomas Paul Harding | *Decision of the Review Board*

2015 LSBC 45 Decision issued : October 20 , 2015 Citation issued : June 18 , 2013 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a section 47 review concerning THOMAS PAUL HARDING RESPONDENT DECISION OF THE REVIEW BOARD Review date : May 14 , 201... Summary | Read full decision

David Mossop, QC, Benchers, Chair Don Amos, Public representative Lynal Doerksen, Benchers Richard Lindsay, QC, Lawyer Lois Serwa, Public representative Tony Wilson, Benchers Dissent decision: Donald Silversides, QC, Lawyer

16.

Laura Elizabeth Holland | *Decision of the Hearing Panel*

2015 LSBC 36 Decision issued : July 20 , 2015 Citation issued : December 12 , 2014 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning LAURA ELIZABETH HOLLAND RESPONDENT DECISION OF THE HEARING PANEL Hearing date : May 5 , 2015 Pa... Read full decision

Lee Ongman, Chair June Preston, Public representative Sandra Weafer, Lawyer

17.

Tracey Lynn Jackson | *Decision on Facts and Determination*

2015 LSBC 57 Decision issued : December 11 , 2015 Citation issued : November 10 , 2014 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning TRACEY LYNN JACKSON RESPONDENT DECISION OF THE HEARING PANEL ON FACTS AND DETERMINATION Hea... Summary | Read full decision

Herman Van Ommen, QC, Chair Woody Hayes, Public representative Gavin Hume, QC, Lawyer

18.

Peter Krogh Jensen | *Decision on Disciplinary Action*

2015 LSBC 10 Report issued : March 25 , 2015 Citation issued : August 25 , 2011 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning PETER KROGH JENSEN RESPONDENT DECISION OF THE HEARING PANEL ON DISCIPLINARY ACTION Hearing date :... Summary | Read full decision

Kenneth Walker, QC, Chair John Hogg, QC, Lawyer Thelma Siglos, Public representative

19.

Krista Margret Jessacher | *Decision on Facts, Determination and Disciplinary Action* 2015

LSBC 43 Decision issued : September 28 , 2015 Oral reasons : September 2 , 2015 Citation

issued : June 25 , 2015 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning KRISTA MARGRET JESSACHER RESPONDENT DECISION OF THE HEARING...Summary | Read full decision

Philip Riddell, Chair Ralston S. Alexander, QC, Lawyer Glenys Blackadder, Public representative

20.

Martin Drew Johnson | *Decision on Jurisdiction to Extend Time to Apply for Review*
2015 LSBC 40 Decision issued : August 27 , 2015 Citation issued : February 21 , 2012 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a section 47 review concerning MARTIN DREW JOHNSON RESPONDENT DECISION OF THE BENCHERS ON JURISDICTION TO EXTEND T... Summary | Read full decision

Majority decision: Nancy Merrill, Chair Joseph Arvay, QC Martin Finch, QC Dean Lawton Sharon Matthews, QC Jamie Maclaren Dissenting decision: Elizabeth Rowbotham

21.

Jason Bawa Mann | *Decision of the Hearing Panel*
2015 LSBC 48 Decision issued : November 6 , 2015 Oral reasons : October 8 , 2015 Citation issued : April 15 , 2015 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning JASON BAWA MANN RESPONDENT DECISION OF THE HEARING PANEL Hearin...Summary | Read full decision

Sharon Matthews, QC, Chair Laura Nashman, Public representative John Waddell, QC, Lawyer

22.

Jennifer Eileen McCormick | *Decision on Facts, Determination and Disciplinary Action*
2015 LSBC 28 Decision issued : June 23 , 2015 Oral reasons : November 4 , 2014 Citation issued : May 29 , 2013 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning JENNIFER EILEEN MCCORMICK RESPONDENT DECISION OF THE HEARING PANEL... Read full decision

A. Cameron Ward, Chair John M. Hogg, QC, Lawyer June Preston, Public representative

23.

Kevin Alexander McLean | *Decision on Facts and Determination*
2015 LSBC 01 Report issued : January 12 , 2015 Citation issued : November 19 , 2013 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning KEVIN ALEXANDER MCLEAN RESPONDENT DECISION OF THE HEARING PANEL ON FACTS AND DETERMINATION Hea... Summary | Read full decision

Elizabeth Rowbotham, Chair Paula Cayley, Public representative Carol Hickman, QC, Lawyer

24.

Kevin Alexander McLean | *Decision on Facts, Determination and Disciplinary Action* 2015 LSBC 06 Decision issued : February 25 , 2015 Citations issued : July 18 , 2014 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning KEVIN ALEXANDER McLEAN RESPONDENT DECISION ON FACTS , DETERMINATION AND DISCIPLINARY ACTION He... Read full decision

Sharon Matthews, QC, Chair Carol J. Gibson, Public representative B. William Sundhu, Lawyer

25.

Kevin Alexander McLean | *Decision on Facts and Determination* 2015 LSBC 09 Decision issued : March 20 , 2015 Citation issued : October 21 , 2014 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning KEVIN ALEXANDER MCLEAN RESPONDENT DECISION OF THE HEARING PANEL ON FACTS AND DETERMINATION Hear... Read full decision

Miriam Kresivo, QC, Chair William M. Everett, QC, Lawyer Dan Goodleaf, Public representative

26.

Kevin Alexander McLean | *Decision on Disciplinary Action - Section 47 Review pending* 2015 LSBC 30 Decision issued : June 29 , 2015 Citation issued : October 21 , 2014 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning KEVIN ALEXANDER MCLEAN RESPONDENT DECISION OF THE HEARING PANEL ON DISCIPLINARY ACTION Hearing d... Read full decision

Miriam Kresivo, QC, Chair William M. Everett, QC, Lawyer Dan Goodleaf, Public representative

27.

Kevin Alexander McLean | *Decision on Facts and Determination* 2015 LSBC 39 Decision issued : August 24 , 2015 Citation issued : October 7 , 2014 CORRECTED DECISION : PARAGRAPHS [89] , [90] AND [93] OF THE DECISION WERE AMENDED ON AUGUST 26 , 2015 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearin...Summary | Read full decision

Pinder K. Cheema, QC, Chair Dennis Day, Public representative Brian Wallace, QC, Lawyer

28.

Kevin Alexander McLean | *Decision on Disciplinary Action* 2015 LSBC 47 Decision issued : November 3 , 2015 Citation issued : November 19 , 2013 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning KEVIN ALEXANDER MCLEAN RESPONDENT DECISION OF THE HEARING PANEL ON DISCIPLINARY ACTION

Heari... Summary | Read full decision

Elizabeth J. Rowbotham, Chair Paula Cayley, Public representative Carol Hickman, QC, Lawyer

29.

Donald Roy McLeod | *Decision on Disciplinary Action*

2015 LSBC 03 Report issued : January 27 , 2015 Citation issued : August 19 , 2013 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning DONALD ROY MCLEOD RESPONDENT DECISION OF THE HEARING PANEL ON DISCIPLINARY ACTION Hearing date :... Read full decision

Jan Lindsay, QC, Chair Satwinder Bains, Public representative Peter Warner, QC, Lawyer

30.

Wesley Mussio | *Decision of Hearing Panel*

2015 LSBC 15 Report issued : April 7 , 2015 Citation issued : July 18 , 2014 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning WESLEY MUSSIO RESPONDENT DECISION OF THE HEARING PANEL Hearing date : March 5 , 2015 Panel : Lynam Do...Read full decision

Lynam Doerksen, Chair Robert Smith, Public representative David Layton, Lawyer

31.

Diep Thanh Hoang Nguyen | *Decision of the Hearing Panel*

2015 LSBC 32 Decision issued : July 6 , 2015 Citation issued : November 10 , 2014 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning DIEP THANH HOANG NGUYEN RESPONDENT DECISION OF THE HEARING PANEL Hearing date : April 7 , 2015 P...Read full decision

Dean Lawton, Chair Patrick Kelly, Public representative Richard Lindsay, QC, Lawyer

32.

Richard Craig Nielsen | *Decision on Facts and Determination*

2015 LSBC 41 Decision issued : September 3 , 2015 Citation issued : May 27 , 2014 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning RICHARD CRAIG NIELSEN RESPONDENT DECISION OF THE HEARING PANEL ON FACTS AND DETERMINATION Hearin... Read full decision

W. Martin Finch, QC, Chair Ralston S. Alexander, QC, Lawyer Jory C. Faibish, Public representative

33.

Christopher Roy Penty | *Decision of the Hearing Panel*

2015 LSBC 51 Decision issued : November 12 , 2015 Oral reasons : October 26 , 2015 Citation issued : March 16 , 2015 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning CHRISTOPHER ROY PENTY RESPONDENT DECISION OF THE HEARING PANE...Summary | Read full decision

David Mossop, QC, Chair J.S. Woody Hayes, Public representative Gavin Hume, QC, Lawyer

34.

Ronald Wayne Perrick | *Decision on Disciplinary Action - Suspension stayed pending Court of Appeal*

2015 LSBC 42 Decision issued : September 8 , 2015 Citation issued : October 8 , 2013 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning RONALD WAYNE PERRICK RESPONDENT DECISION OF THE HEARING PANEL ON DISCIPLINARY ACTION Hearing... Read full decision

David Mossop, QC, Chair John M. Hogg, QC, Lawyer Linda Michaluk, Public representative

35.

Lyle Daniel Perry | *Decision on Application for Enrolment - s. 47 Review pending*

2015 LSBC 13 Decision issued : April 2 , 2015 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning LYLE DANIEL PERRY APPLICANT DECISION OF THE HEARING PANEL ON APPLICATION FOR ENROLMENT Hearing date : October 23 , 2014 Panel : Diss...Read full decision

Dissenting decision: Gregory Petrisor, Chair Majority decision: Adam Eneas, Public representative Shona Moore, QC, Lawyer

36.

Cameron John Pham | *Decision of the Hearing Panel*

2015 LSBC 14 Decision issued : April 2 , 2015 Oral decision : February 4 , 2015 Citation issued : July 11 , 2014 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning CAMERON JOHN PHAM RESPONDENT DECISION OF THE HEARING PANEL Hearin... Read full decision

Dissenting decision: Gregory Petrisor, Chair Majority decision: Adam Eneas, Public representative Shona Moore, QC, Lawyer

37.

Ian David Reith | *Decision on Facts, Determination and Disciplinary Action*

2015 LSBC 50 Decision issued : November 12 , 2015 Oral reasons on Facts and Determination : October 19 , 2015 Citation issued : October 9 , 2014 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning IAN DAVID REITH RESPONDENT DECISI... Summary| Read full decision

David W. Mossop, QC, Chair Carol Gibson, Public representative Peter D. Warner, QC, Lawyer

38.

John Robert Sandrelli | *Decision on Disciplinary Action*

2015 LSBC 17 Decision issued : April 10 , 2015 Citation issued : January 30 , 2014 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning JOHN ROBERT SANDRELLI RESPONDENT DECISION OF THE HEARING PANEL ON DISCIPLINARY ACTION Hearing d... Read full decision

Dissent decision: Lee Ongman, Chair Majority decision: Lance Ollenberger, Public representative Brian J. Wallace, QC, Lawyer

39.

Catherine Ann Sas | *Decision on Facts and Determination*

2015 LSBC 19 Decision issued : April 20 , 2015 Citation issued : August 1 , 2013 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning CATHERINE ANN SAS , QC RESPONDENT DECISION OF THE HEARING PANEL ON FACTS AND DETERMINATION Hearin... Summary | Read full decision

Dean Lawton, Chair Dan Goodleaf, Public representative Donald Silversides, QC, Lawyer

40.

Catherine Ann Sas | *Decision on Application to Adjourn*

2015 LSBC 38 Decision issued : July 29 , 2015 Oral decision : July 22 , 2015 Citation issued : August 1 , 2013 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning CATHERINE ANN SAS , QC RESPONDENT DECISION OF THE HEARING PANEL ON... Read full decision

Dean Lawton, Chair Dan Goodleaf, Public representative Donald Silversides, QC, Lawye

41.

David Jacob Siebenga | *Decision on Facts, Determination and Disciplinary Action*

2015 LSBC 44 Decision issued : September 30 , 2015 Oral decision on Facts and Determination : July 23 , 2015 Citation issued : July 18 , 2014 Citation amended : May 11 , 2015 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning DAV... Read full decision

David Mossop, QC, Chair Carol J. Gibson, Public representative David Layton, Lawyer

42.

Robert Collingwood Strother | *Decision on Facts and Determination*

2015 LSBC 07 Report issued : February 26 , 2015 Citation issued : September 8 , 2009 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC

1998 , c . 9 and a hearing concerning ROBERT COLLINGWOOD STROTHER RESPONDENT DECISION OF THE HEARING PANEL ON FACTS AND DETERMINATI... Summary | Read full decision

Gavin Hume, QC, Chair Gregory Petrisor Alan Ross

43.

Robert Collingwood Strother | *Decision on Disciplinary Action*

2015 LSBC 56 Decision issued : December 11 , 2015 Citation issued : September 8 , 2009 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning ROBERT COLLINGWOOD STROTHER RESPONDENT DECISION OF THE HEARING PANEL ON DISCIPLINARY ACTION... Summary | Read full decision

Gavin Hume, QC, Chair Gregory Petrisor Alan Ross

44.

Leonides Tungohan | *Decision on Facts and Determination*

2015 LSBC 02 Report issued : January 14 , 2015 Citation issued : May 29 , 2013 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning LEONIDES TUNGOHAN RESPONDENT DECISION OF THE HEARING PANEL ON FACTS AND DETERMINATION Hearing dates... Read full decision

Miriam Kresivo, QC, Chair Bruce LeRose, QC, Lawyer Lois Serwa, Public representative

45.

Leonides Tungohan | *Decision on Disciplinary Action*

2015 LSBC 26 Decision issued : June 5 , 2015 Citation issued : May 29 , 2013 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning LEONIDES TUNGOHAN RESPONDENT DECISION OF THE HEARING PANEL ON DISCIPLINARY ACTION Hearing date : Apri... Read full decision

Miriam Kresivo, QC, Chair Bruce LeRose, QC, Lawyer Lois Serwa, Public representative

46.

Leonides Tungohan | *Decision on Jurisdiction*

2015 LSBC 33 Decision issued : July 9 , 2015 Citation issued : May 29 , 2013 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning LEONIDES TUNGOHAN RESPONDENT DECISION OF THE REVIEW BOARD ON JURISDICTION Written submissions : March... Read full decision

Lynal Doerksen, Chair James Dorsey, QC, Lawyer Martin Finch, QC, Bencher Sharon Matthews, QC, Bencher Laura Nashman, Public representative Karen Nordlinger, QC, Lawyer Lance Ollenberger, Public representative

47.

Leonides Tungohan | *Decision of Review Board on Costs Pertaining to an Application on Jurisdiction to hear Review*

2015 LSBC 52 Decision issued : November 18 , 2015 Citation issued : May 29 , 2013 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning LEONIDES TUNGOHAN RESPONDENT DECISION OF THE REVIEW BOARD ON COSTS PERTAINING TO APPLICATION ON... Read full decision

Lynal Doerksen, Chair James Dorsey, QC, Lawyer Martin Finch, QC, Bencher Sharon Matthews, QC, Bencher Laura Nashman, Public representative Karen Nordlinger, QC, Lawyer Lance Ollenberger, Public representative

48.

Leonides Tungohan | *Decision on Application for Stay*

2015 LSBC 54 Decision issued : December 1 , 2015 Citation issued : May 29 , 2013 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning LEONIDES TUNGOHAN APPLICANT DECISION ON APPLICATION FOR STAY Application date : August 17 , 2015... Read full decision

Sharon Matthews, QC

49.

Gary Russell Vlug | *Decision on Application for Extension of Stay - stay extended pending further order of Review panel*

2015 LSBC 08 Report issued : March 19 , 2015 Citation issued : April 2 , 2012 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a section 47 review concerning GARY RUSSELL VLUG APPLICANT DECISION ON APPLICATION FOR AN EXTENSION OF STAY Application d...Read full decision

Lynal Doerksen

50.

Gary Russell Vlug | *Decision of the Benchers on Review*

2015 LSBC 58 Decision issued : December 31 , 2015 Citations issued : April 2 , 2012 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a section 47 review concerning GARY RUSSELL VLUG RESPONDENT DECISION OF THE BENCHERS ON REVIEW Review date : May 1... Summary | Read full decision

First decision: Haydn Acheson Pinder Cheema, QC Jamie Maclaren Second decision: Kenneth Walker, QC, Chair Satwinder Bains Elizabeth Rowbotham Not participating in decision:

51.

Gary Russell Vlug | *Decision on Application to Introduce Fresh Evidence*

2015 LSBC 59 Decision issued : December 31 , 2015 Citation issued : April 2 , 2012 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a section 47 review concerning GARY RUSSELL VLUG APPLICANT DECISION OF THE BENCHERS ON APPLICATION TO INTRODUCE FRES... Summary | Read full decision

Kenneth Walker, QC, Chair Haydn Acheson Satwinder Bains Pinder Cheema, QC Jamie Maclaren Elizabeth Rowbotham A. Cameron Ward (did not participate in the decision)

52.

Douglas Warren Welder | *Decision on Disciplinary Action*

2015 LSBC 35 Decision issued : July 13 , 2015 Citation issued : November 13 , 2012 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning DOUGLAS WARREN WELDER RESPONDENT DECISION OF THE HEARING PANEL ON DISCIPLINARY ACTION Hearing d... Read full decision

Lynal Doerksen, Chair Graeme Roberts, Public representative Sandra Weafer, Lawyer

53.

Maureen Joyce Wesley | *Decision on Facts and Determination*

2015 LSBC 05 Report issued : February 17 , 2015 Citation issued : April 23 , 2014 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning MAUREEN JOYCE WESLEY RESPONDENT DECISION OF THE HEARING PANEL ON FACTS AND DETERMINATION Hearing... Summary | Read full decision

Herman Van Ommen, QC, Chair Woody Hayes, Public representative Bruce LeRose, QC, Lawyer

54.

Eric John Woodward | *Decision of the Hearing Panel*

2015 LSBC 49 Decision issued : November 9 , 2015 Oral reasons : August 13 , 2015 Citation issued : October 9 , 2015 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning ERIC JOHN (JACK) WOODWARD RESPONDENT DECISION OF THE HEARING...Summary | Read full decision

Lee Ongman, Chair Dan Goodleaf, Public representative Carol Hickman, QC, Lawyer

2014 – DISCIPLINE DECISIONS

2014 LSBC Discipline Committee Decision

Reviews complaints concerning lawyers or articled students who are referred by Law Society staff, the Complainants' Review Committee or other committees.

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1. Philip Riddell (Chair)
2. Maria Morellato, QC (Vice-chair)
3. Jeevyn Dhaliwal
4. Craig A.B. Ferris, QC
5. Peter B. Lloyd, FCA
6. Benjimen Meisner
7. Gregory A. Petrisor

NON-BENCHERS:

8. Edmund Caissie
9. Fiona Hunter
10. Paul Love

CONFLICTS OF INTEREST – 2014 (0)

2014 Members of Hearing Tribunal

1. Lee Ongman, Chair,
2. Dr. Gail Bellward, Public representative,
3. Carol Hickman, QC, Lawyer
4. *Bruce LeRose, QC, Chair*
5. Lynal Doerksen
6. Lynal Doerksen
7. Lynal Doerksen
8. David Mossop, QC, Chair Haydn Acheson
9. Thomas Fellhauer Dean Lawton Sharon Matthews, QC Herman Van Ommen, QC Tony Wilson
10. Thomas Fellhauer, Chair Don Amos, Public representative Jennifer Chow, Lawyer
11. Vincent Orchard, QC, Chair, Jennifer Chow, Lawyer, June Preston, Public representative
12. David Mossop, QC
13. Thomas Fellhauer, Chair, Paula Cayley, Public representative, John Waddell, QC, Lawyer
14. : Nancy Merrill, Chair, William Everett, QC, Lawyer, Graeme Roberts, Public representative
15. Thomas P. Fellhauer, Chair, Gavin Hume, QC, Lawyer, Lance Ollenberger, Public representative
16. David Renwick, QC, Chair, Dennis Day, Public representative, David Layton, Lawyer
17. David Renwick, QC, Chair, Dennis Day, Public representative, David Layton, Lawyer
18. A. Cameron Ward, Chair Dennis Day, Public representative Brian J. Wallace, QC, Lawyer
19. Nancy Merrill, Chair Robert Smith, Public representative John Waddell, QC, Lawyer

20. Elizabeth J. Rowbotham, Chair Karen Nordlinger, QC, Lawyer Thelma Siglos, Public representative
21. Sharon Matthews, QC, Chair Ralston S. Alexander, QC, Lawyer John Lane, Public Representative
22. Lynal Doerksen, Chair, Glenys Blackadder, Public representative, John M. Hogg, QC, Lawyer
23. Thelma O'Grady, Chair, Don Amos, Public representative, Brian J. Wallace, QC, Lawyer
24. Barry Zacharias, Chair, James E. Dorsey, QC, Lawyer, Patrick Kelly, Public representative
25. Kenneth Walker, QC, Chair, John Hogg, QC, Lawyer, Thelma Siglos, Public representative
26. Tony Wilson, Chair, Dan Goodleaf, Public representative Concurring decision: Dale G. Sanderson, QC, Lawyer
27. Tony Wilson, Chair Dan Goodleaf, Public representative Dale G. Sanderson, QC, Lawyer
28. Ken Walker, QC, Chair Dr. Gail Bellward, Public representative Peter Warner, QC, Lawyer
29. Ken Walker, QC, Chair Dr. Gail Bellward, Public representative Peter Warner, QC, Lawyer
30. Miriam Kresivo, Q.C., Chair Shona A. Moore, Q.C., Lawyer June Preston, Public Representative
31. Tony Wilson, Chair, Don Amos, Lynal Doerksen, John Hogg, QC, Patrick Kelly, Dean Lawton and Donald Silversides, QC
32. Jan Lindsay, QC, Chair, Satwinder Bains, Public representative, Peter Warner, QC, Lawyer
33. A. Cameron Ward, Chair Patrick Kelly, Public representative David Layton, Lawyer
34. David M. Renwick, QC, Chair, John S. (Woody) Hayes, Public representative, Bruce LeRose, QC, Lawyer
35. David Renwick, QC, Chair, John (Woody) Hayes, Public representative, Bruce LeRose, QC, Lawyer
36. David Renwick, QC, Chair, John (Woody) Hayes, Public representative, Bruce LeRose, QC, Lawyer
37. David Mossop, QC, Chair John M. Hogg, QC, Lawyer Linda Michaluk, Public representative
38. W. Martin Finch, QC, Chair William Everett, QC, Lawyer Clayton Shultz, Public representative
39. C.E. Lee Ongman, Chair Lance Ollenberger, Public representative Brian J. Wallace, QC, Lawyer
40. Lee Ongman, Chair, Anna K. Fung, QC, Lawyer, John Lane, Public representative
41. Lee Ongman, Chair Anna Fung, QC, Lawyer John Lane, Public representative
42. Tony Wilson
43. Tony Wilson, Chair, Clayton Shultz, Public representative, Gary Weatherill, QC, Lawyer
44. Tony Wilson, Chair Clayton Shultz, Public representative Gary Weatherill, QC, Lawyer
45. Jan Lindsay, QC
46. Lee Ongman, Chair, Jasmin Z. Ahmad, Lawyer, Jory C. Faibish, Public representative
47. Lynal Doerksen, Chair Graeme Roberts, Public representative Sandra Weafer, Lawyer
48. Lynal Doerksen, Chair Graeme Roberts, Public representative Sandra Weafer, Lawyer
49. David Mossop, QC, Chair, Jasmin Ahmad, Lawyer, Clayton Shultz, Public representative

2014 Decisions

1.

Roger Dwight Batchelor | *Decision of Hearing Panel*

2014 LSBC 11 Report issued : March 04 , 2014 Citation issued : June 13 , 2013 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning ROGER DWIGHT BATCHELOR Respondent Decision of the Hearing Panel Hearing date : January 28 , 2014 Pan... [Read full decision](#)

Lee Ongman, Chair, Dr. Gail Bellward, Public representative, Carol Hickman, QC, Lawyer

2.

Pamela Suzanne Boles | *Decision of Bruce LeRose, QC, Chair*

2014 LSBC 47 Decision issued : October 16 , 2014 Citation issued : December 22 , 2010 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning PAMELA SUZANNE BOLES RESPONDENT DECISION OF BRUCE LEROSE , QC , CHAIR Hearing date : April 1... [Read full decision](#)
Decision of Bruce LeRose, QC, Chair

3.

Vivian Pei-Hua Chiang | *Decision on Application to Adjourn and Application for Further Stay of Proceedings*

2014 LSBC 10 Report issued : February 27 , 2014 Citation issued : May 11 , 2007 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a section 47 review concerning VIVIAN CHIANG Applicant Decision of the President's Designate on an Application to Adjou... [Read full decision](#)

Lynal Doerksen

4.

Vivian Pei-Hua Chiang | *Decision on Application to Settle Record*

2014 LSBC 26 Report issued : June 12 , 2014 Citation issued : May 11 , 2007 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a s . 47 review concerning Vivian Chiang Applicant Decision on Application to Settle the Record Application date : April 25... [Read full decision](#)

Lynal Doerksen

5.

Vivian Pei-Hua Chiang | *Decision on Adjournment Application*

2014 LSBC 28 Decision issued : June 25 , 2014 Citation issued : May 11 , 2007 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a section 47 review concerning VIVIAN CHIANG APPLICANT DECISION OF THE PRESIDENT'S DESIGNATE ON AN APPLICATION TO ADJOURN... [Read full decision](#)

Lynal Doerksen

6.

Vivian Pei-Hua Chiang | *Decision on Adjournment Application*

2014 LSBC 43 Decision issued : September 11 , 2014 Citation issued : May 11 , 2007 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a a section 47 review concerning VIVIAN CHIANG APPLICANT DECISION OF THE PRESIDENT’S DESIGNATE ON AN APPLICATION TO... [Read full decision](#)

Lynal Doerksen

7.

Vivian Pei-Hua Chiang | *Decision on Review*

2014 LSBC 55 Report issued : November 10 , 2014 Citation issued : May 11 , 2007 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a section 47 review concerning VIVIAN CHIANG APPLICANT DECISION OF THE BENCHERS ON REVIEW Review date : September 12 ,... [Read full decision](#)

David Mossop, QC, Chair Haydn Acheson Thomas Fellhauer Dean Lawton Sharon Matthews, QC Herman Van Ommen, QC Tony Wilson

8.

Douglas Bernard Chiasson | *Decision of the Hearing Panel*

2014 LSBC 32 Decision issued : July 30 , 2014 Oral reasons : May 22 , 2014 Citation issued : December 17 , 2013 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning DOUGLAS BERNARD CHIASSON RESPONDENT DECISION OF THE HEARING PANEL... [Read full decision](#)

Thomas Fellhauer, Chair Don Amos, Public representative Jennifer Chow, Lawyer

9.

Douglas Edward Dent | *Decision on Facts, Determination and Disciplinary action*

2014 LSBC 04 Decision issued : January 27 , 2014 Oral Reasons on Facts and Determination : October 11 , 2013 Citation issued : February 18 , 2013 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning DOUGLAS EDWARD DENT Respondent D... [Read full decision](#)

Vincent Orchard, QC, Chair, Jennifer Chow, Lawyer, June Preston, Public representative

10.

Douglas Edward Dent | *Decision on Application for Stay of Proceedings*

2014 LSBC 12 Report issued : March 05 , 2014 Oral Reasons : February 7 , 2014 Citation issued : February 18 , 2013 The Law Society of British Columbia In the matter of the Legal Profession

Act , SBC 1998 , c . 9 and a hearing concerning DOUGLAS EDWARD DENT Applicant
Decision on Application for Stay... [Read full decision](#)

David Mossop, QC

11.

Amarjit Singh Dhindsa | *Decision of Hearing Panel*

2014 LSBC 18 Decision issued : April 17 , 2014 Oral Reasons : January 15 , 2014 Citation issued : August 12 , 2013 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning AMARJIT SINGH DHINDSA Respondent Decision of the Hearing Panel... [Read full decision](#)

Thomas Fellhauer, Chair, Paula Cayley, Public representative, John Waddell, QC, Lawyer

12.

William Terrance Faminoff | *Decision on Facts and Determination*

2014 LSBC 22 Report issued : May 9 , 2014 Citation issued : February 25 , 2013 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning WILLIAM TERRANCE FAMINOFF Respondent Decision of the Hearing Panel Hearing date : March 12 , 2014 P... [Summary](#) | [Read full decision](#)

Panel: Nancy Merrill, Chair, William Everett, QC, Lawyer, Graeme Roberts, Public representative

13.

Stanley Chang Woon Foo | *Decision on Disciplinary Action*

2014 LSBC 21 Decision issued : April 30 , 2014 Citation issued : September 26 , 2012 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Stanley Chang Woon Foo Respondent Decision of the Hearing Panel on Disciplinary Action Hearin... [Read full decision](#)

Thomas P. Fellhauer, Chair, Gavin Hume, QC, Lawyer, Lance Ollenberger, Public representative

14.

Rudi Gellert | *Decision on Disciplinary Action*

2014 LSBC 05 Report issued : February 13 , 2014 Citation issued : December 18 , 2012 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Rudi Gellert Respondent Decision of the Hearing Panel on Disciplinary Action Hearing date : N... [Read full decision](#)

Panel: David Renwick, QC, Chair, Dennis Day, Public representative, David Layton, Lawyer

15.

Thomas Paul Harding | *Decision on Disciplinary Action*

2014 LSBC 06 Report issued : February 17 , 2014 Citation issued : October 18 , 2010 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Thomas Paul Harding Respondent Decision of the Hearing Panel on Disciplinary Action Hearing da... [Read full decision](#)

Panel: David Renwick, QC, Chair, Dennis Day, Public representative, David Layton, Lawyer

16.

Thomas Paul Harding | *Decision on Facts and Determination*

2014 LSBC 29 Decision issued : June 27 , 2014 Citation issued : June 18 , 2013 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning THOMAS PAUL HARDING RESPONDENT DECISION OF THE HEARING PANEL ON FACTS AND DETERMINATION Hearing dat... [Read full decision](#)

A. Cameron Ward, Chair Dennis Day, Public representative Brian J. Wallace, QC, Lawyer

17.

Thomas Paul Harding | *Decision on Facts and Determination*

2014 LSBC 30 Decision issued : July 7 , 2014 Citation issued : December 3 , 2013 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning THOMAS PAUL HARDING RESPONDENT DECISION OF THE HEARING PANEL ON FACTS AND DETERMINATION Hearing d... [Read full decision](#) Nancy Merrill, Chair Robert Smith, Public representative John Waddell, QC, Lawyer

18.

Thomas Paul Harding | *Decision on Facts and Determination*

2014 LSBC 45 Decision issued : September 29 , 2014 Citation issued : December 3 , 2013 CORRECTED DECISION : PARAGRAPH [35] WAS AMENDED ON OCTOBER 6 , 2014 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning THOMAS PAUL HARDING R... [Read full decision](#)

Elizabeth J. Rowbotham, Chair Karen Nordlinger, QC, Lawyer Thelma Siglos, Public representative

19.

Thomas Paul Harding | *Decision on Facts and Determination*

2014 LSBC 52 Decision issued : November 3 , 2014 Citation issued : February 22 , 2013 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning THOMAS PAUL HARDING RESPONDENT DECISION OF THE HEARING PANEL ON FACTS AND DETERMINATION Hear... [Read full decision](#)

Sharon Matthews, QC, Chair Ralston S. Alexander, QC, Lawyer John Lane, Public Representative

20.

David Donald Hart | *Decision of Hearing Panel*

2014 LSBC 17 Decision issued : April 9 , 2014 Oral Reasons : February 25 , 2014 Citation issued : May 29 , 2013 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning DAVID DONALD HART Respondent Decision of the Hearing Panel Hearing... [Read full decision](#)

Lynal Doerksen, Chair, Glenys Blackadder, Public representative, John M. Hogg, QC, Lawyer

21.

Laurel Elizabeth Hudson | *Decision on Facts, Determination and Disciplinary action* 2014

LSBC 02 Report issued : January 20 , 2014 Citation issued : July 5 , 2012 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning LAUREL ELIZABETH HUDSON (TANNER) Respondent Decision of the Hearing Panel on Facts , Determinatio... [Read full decision](#)

Thelma O'Grady, Chair, Don Amos, Public representative, Brian J. Wallace, QC, Lawyer

22.

Alan Gordon Shursen Hultman | *Decision of Hearing Panel*

2014 LSBC 13 Report issued : March 7 , 2014 Oral Reasons : December 12 , 2013 Citation issued : February 18 , 2013 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning ALAN GORDON SHURSEN HULTMAN Respondent Decision of the Hearing... [Read full decision](#)

Barry Zacharias, Chair, James E. Dorsey, QC, Lawyer, Patrick Kelly, Public representative

23.

Peter Krogh Jensen | *Decision on Facts and Determination*

2014 LSBC 14 Report issued : March 14 , 2014 Citation issued : August 25 , 2011 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Peter Krogh Jensen Respondent Decision of the Hearing Panel on Facts and Determination Hearing dat... [Summary](#) | [Read full decision](#)

Kenneth Walker, QC, Chair, John Hogg, QC, Lawyer, Thelma Siglos, Public representative

24.

Martin Drew Johnson | *Decision on Facts and Determination*

2014 LSBC 08 Report issued : February 24 , 2014 Citation issued : February 21 , 2012 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Martin Drew Johnson Respondent Decision of the Hearing Panel on Facts and Determination Heari... [Summary](#) | [Read full decision](#)

Panel: Majority decision: Tony Wilson, Chair, Dan Goodleaf, Public representative Concurring decision: Dale G. Sanderson, QC, Lawyer

25.

Martin Drew Johnson | *Decision on Disciplinary Action*

2014 LSBC 50 Report issued : November 3 , 2014 Citation issued : February 21 , 2012 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning MARTIN DREW JOHNSON RESPONDENT DECISION OF THE HEARING PANEL ON DISCIPLINARY ACTION Hearing da... [Summary](#) | [Read full decision](#)

Tony Wilson, Chair Dan Goodleaf, Public representative Dale G. Sanderson, QC, Lawyer

26.

Georgiale Alida Lang | *Decision on Facts and Determination*

2014 LSBC 35 Decision issued : August 25 , 2014 Citation issued : March 18 , 2014 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning GEORGIALEE ALIDA LANG RESPONDENT DECISION OF THE HEARING PANEL ON FACTS AND DETERMINATION Hearin... [Read full decision](#)

Ken Walker, QC, Chair Dr. Gail Bellward, Public representative Peter Warner, QC, Lawyer

27.

Georgiale Alida Lang | *Decision on Disciplinary Action*

2014 LSBC 60 Report issued : December 10 , 2014 Oral reasons : November 20 , 2014 Citation issued : March 18 , 2014 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning GEORGIALEE ALIDA LANG RESPONDENT DECISION OF THE HEARING PANEL... [Read full decision](#)

Ken Walker, QC, Chair Dr. Gail Bellward, Public representative Peter Warner, QC, Lawyer

28.

Jennifer Eileen McCormick | *Decision on Preliminary Application*

2014 LSBC 36 Decision issued : August 25 , 2014 Oral reasons : July 2 , 2014 Citation issued : May 29 , 2013 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning JENNIFER EILEEN MCCORMICK RESPONDENT DECISION OF THE HEARING PANEL ON... [Read full decision](#)

Miriam Kresivo, Q.C., Chair Shona A. Moore, Q.C., Lawyer June Preston, Public Representative

29.

Kevin Alexander McLean | *Decision on Application of the Respondent for Disqualification of Discipline Counsel*

2014 LSBC 38 Decision issued : September 3 , 2014 Oral reasons : June 2 , 2014 Citation issued : November 19 , 2013 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the

Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning KEVIN ALEXANDER MCLEAN RESPONDENT DECISION OF THE HEARING PANE... [Summary](#) | [Read full decision](#)

30.

Kevin Alexander McLean | *Decision on Facts and Determination - Court of Appeal pending*
2014 LSBC 63 Report issued : December 16 , 2014 Citation issued : April 25 , 2014 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning KEVIN ALEXANDER MCLEAN RESPONDENT DECISION OF THE HEARING PANEL ON FACTS AND DETERMINATION Heari... [Summary](#) | [Read full decision](#)

Tony Wilson, Chair, Don Amos, Lynal Doerksen, John Hogg, QC, Patrick Kelly, Dean Lawton and Donald Silversides, QC

31.

Donald Roy McLeod | *Decision on Facts and Determination*
2014 LSBC 16 Decision issued : April 9 , 2014 Citation issued : August 19 , 2013 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning DONALD ROY MCLEOD Respondent Decision of the Hearing Panel on Facts and Determination Hearing dat... [Read full decision](#)

Jan Lindsay, QC, Chair, Satwinder Bains, Public representative, Peter Warner, QC, Lawyer

32.

Homayoun Sebastian Nejat | *Decision of Hearing Panel*
2014 LSBC 51 Report issued : November 3 , 2014 Citation issued : December 16 , 2013 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning SEBASTIAN NEJAT RESPONDENT DECISION OF THE HEARING PANEL Hearing date : August 26 , 2014 Panel... [Read full decision](#)

A. Cameron Ward, Chair Patrick Kelly, Public representative David Layton, Lawyer

33.

Ronald Wayne Perrick | *Ruling on Application concerning Abuse of Process*
2014 LSBC 01 Report issued : January 16 , 2014 Oral Reasons : October 21 , 2013 Citation issued : December 20 , 2012 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning RONALD WAYNE PERRICK Respondent Ruling on Application Concern... [Read full decision](#)

David M. Renwick, QC, Chair, John S. (WoodY) Hayes, Public representative, Bruce LeRose, QC, Lawyer

34.

Ronald Wayne Perrick | *Decision on Facts and Determination*

2014 LSBC 03 Report issued : January 23 , 2014 Citation issued : December 20 , 2012 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Ronald Wayne Perrick Respondent Decision of the Hearing Panel on Facts and Determination Heari... [Read full decision](#)

David Renwick, QC, Chair, John (Woody) Hayes, Public representative, Bruce LeRose, QC, Lawyer

35.

Ronald Wayne Perrick | *Decision on Disciplinary action*

2014 LSBC 25 Report issued : June 12 , 2014 Citation issued : December 20 , 2012 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Ronald Wayne Perrick Respondent Decision of the Hearing Panel on Disciplinary Action Hearing date... [Read full decision](#)

David Renwick, QC, Chair, John (Woody) Hayes, Public representative, Bruce LeRose, QC, Lawyer

36.

Ronald Wayne Perrick | *Decision on Facts and Determination - Court of Appeal pending*

2014 LSBC 39 Decision issued : September 3 , 2014 Citation issued : October 8 , 2013 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning RONALD WAYNE PERRICK RESPONDENT DECISION OF THE HEARING PANEL ON FACTS AND DETERMINATION Hear... [Read full decision](#)

David Mossop, QC, Chair John M. Hogg, QC, Lawyer Linda Michaluk, Public representative

37.

John Edward Roberts | *Decision of Hearing Panel*

2014 LSBC 42 Decision issued : September 8 , 2014 Oral reasons : July 16 , 2014 Citation issued : May 2 , 2014 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning JOHN EDWARD ROBERTS RESPONDENT DECISION OF THE HEARING PANEL Hearin... [Read full decision](#)

W. Martin Finch, QC, Chair William Everett, QC, Lawyer Clayton Shultz, Public representative

38.

John Robert Sandrelli | *Decision on Facts and Determination*

2014 LSBC 44 Decision issued : September 17 , 2014 Citation issued : January 30 , 2014 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning JOHN ROBERT SANDRELLI RESPONDENT DECISION OF THE HEARING PANEL ON FACTS AND DETERMINATION H... [Read full decision](#)

C.E. Lee Ongman, Chair Lance Ollenberger, Public representative Brian J. Wallace, QC, Lawyer

39.

Bradley Darryl TAK | *Decision on Facts and determination*

2014 LSBC 27 Report issued : June 16 , 2014 Citations issued : May 26 , 2011 and May 24 , 2012 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning BRADLEY DARRYL TAK Respondent Decision of the Hearing Panel on Facts and Determinat... [Read full decision](#)

Lee Ongman, Chair, Anna K. Fung, QC, Lawyer, John Lane, Public representative

40.

Bradley Darryl TAK | *Decision on Disciplinary Action*

2014 LSBC 57 Report issued : November 27 , 2014 Citations issued : May 26 , 2011 and May 24 , 2012 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning BRADLEY DARRYL TAK RESPONDENT DECISION OF THE HEARING PANEL ON DISCIPLINARY ACT... [Read full decision](#) | *Trust Protection Coverage Payment*

Lee Ongman, Chair Anna Fung, QC, Lawyer John Lane, Public representative

41.

Leonides Tungohan | *Decision on Preliminary Question*

2014 LSBC 41 Decision issued : September 8 , 2014 Oral reasons : April 15 , 2014 Citation issued : May 29 , 2013 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning LEONIDES TUNGOHAN RESPONDENT DECISION OF A BENCHER ON AN APPLICAT... [Read full decision](#)

Tony Wilson

42.

Gary Russell Vlug | *Decision on Facts and Determination*

2014 LSBC 09 Report issued : February 26 , 2014 Citation issued : April 2 , 2012 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning GARY RUSSELL VLUG Respondent CORRECTED DECISION : PARAGRAPH [83] OF THE DECISION WAS AMENDED ON... [Read full decision](#)

Tony Wilson, Chair, Clayton Shultz, Public representative, Gary Weatherill, QC, Lawyer

43.

Gary Russell Vlug | *Decision on Disciplinary Action*

2014 LSBC 40 Decision issued : September 5 , 2014 Citation issued : April 2 , 2012 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning GARY RUSSELL VLUG RESPONDENT DECISION OF THE HEARING PANEL ON DISCIPLINARY ACTION Hearing date... [Read full decision](#)

Tony Wilson, Chair Clayton Shultz, Public representative Gary Weatherill, QC, Lawyer

44.

Gary Russell Vlug | *Decision on Application for Stay - Stay extended pending further order of Review panel*

2014 LSBC 48 Decision issued : October 22 , 2014 Oral decision : September 22 , 2014 Citation issued : April 2 , 2012 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning GARY RUSSELL VLUG APPLICANT DECISION ON APPLICATION FOR STAY... [Read full decision](#)

Jan Lindsay, QC

45.

Douglas Warren Welder | *Decision on Disciplinary Action*

2014 LSBC 20 Report issued : April 30 , 2014 Citation issued : December 20 , 2012 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning DOUGLAS WARREN WELDER Respondent Decision of the Hearing Panel on Disciplinary Action Hearing da... [Read full decision](#)

Lee Ongman, Chair, Jasmin Z. Ahmad, Lawyer, Jory C. Faibish, Public representative

46.

Douglas Warren Welder | *Decision on Adjournment Application*

2014 LSBC 53 Report issued : November 3 , 2014 Oral reasons : July 7 , 2014 Citation issued : November 13 , 2012 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning DOUGLAS WARREN WELDER RESPONDENT DECISION OF THE HEARING PANEL ON... [Read full decision](#)

Lynal Doerksen, Chair Graeme Roberts, Public representative Sandra Weafer, Lawyer

47.

Douglas Warren Welder | *Decision on Facts and Determination*

2014 LSBC 58 Report issued : November 28 , 2014 Citation issued : November 13 , 2012 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning DOUGLAS WARREN WELDER RESPONDENT DECISION OF THE HEARING PANEL ON FACTS AND DETERMINATION Hea... [Read full decision](#)

Lynal Doerksen, Chair Graeme Roberts, Public representative Sandra Weafer, Lawyer

48.

Yao-yuan Xia | *Decision on Facts, Determination and Disciplinary action*

2014 LSBC 24 Report issued : June 11 , 2014 Oral decision on Facts and determination : March 27 , 2014 Citation issued : October 8 , 2013 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Tim Yao - Yuan Xia Respondent Decision o... [Read full decision](#)

David Mossop, QC, Chair, Jasmin Ahmad, Lawyer, Clayton Shultz, Public representative

2013 LSBC Discipline Decisions 2013 LSBC Discipline Committee Decision

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2. Stacy Kuiack (Vice-chair)
3. Bill MacLagan, QC
4. Maria Morellato, QC
5. Claude Richmond
6. Phil Riddell
7. Richard Stewart, QC

NON-BENCHERS:

8. Karey Brooks
9. Shelley Sugarman
10. Anthony Vecchio, QC

Conflicts of Interest -2013 (0)

[NONE\

2013

1. Gregory Petrisor, Chair, Carol W. Hickman, QC, Lawyer, Graeme Roberts, Public representative
2. David Mossop, QC, Chair, Satwinder Bains, Public Representative, James E. Dorsey, QC, Lawyer
3. Leon Getz, QC, Chair, Jan Lindsay, QC, David Renwick, QC\
4. Leon Getz, QC, Chair, Paula Cayley, Public Representative, William Sundhu, Lawyer
5. Thelma O'Grady, Chair, Ralston S. Alexander, QC, Karl F. Warner, QC
6. Lynal Doerksen
7. Vincent Orchard, QC, Chair, Don Amos, Public Representative, Jennifer Chow, Lawyer

8. Vincent Orchard, QC, Chair, Don Amos, Public Representative, Jennifer Chow, Lawyer
9. Kenneth Walker, QC, Chair, John Lane, Public representative, Karen Nordlinger, QC, Lawyer
10. Greg Petrisor, Chair, John Ferguson, Public representative, Shona Moore, QC, Lawyer
11. Thomas P. Fellhauer, Chair, Gavin Hume, QC, Lawyer, Lance Ollenberger, Public representative
12. David Renwick, QC, Chair, Dennis Day, Public Representative, David Layton, Lawyer
13. Bruce LeRose, QC, Chair, William Everett, QC, Lawyer, June Preston, Public Representative'
14. Bruce LeRose, QC, Chair, William Everett, QC, Lawyer, June Preston, Public Representative
15. Gregory Petrisor, Chair, Dennis Day, Public Representative, David Layton, Lawyer
16. Thomas P. Fellhauer, Chair, Ralston Alexander, QC, Lawyer, Patrick Kelly, Public representative
17. Thomas P. Fellhauer, Chair, Ralston Alexander, QC, Lawyer, Patrick Kelly, Public representative
18. Jan Lindsay, QC, Chair, Satwinder Bains, Lynal E. Doerksen, Benjimen Meisner, David Mossop, QC, Thelma O'Grady, Gregory Petrisor
19. Leon Getz, QC, Chair, Lynal Doerksen, Jan Lindsay, QC, Benjimen Meisner, Thelma O'Grady, Lee Ongman, David Renwick, QC, Kenneth Walker, QC
20. Thomas P. Fellhauer, Chair, Richard Lindsay, QC, Lawyer, Laura Nashman, Public representative
21. Panel: David Mossop, QC, Chair, Adam Eneas, Public Representative, Dale G. Sanderson, QC, Lawyer
22. David W. Mossop, QC, Chair, Shona A. Moore, QC, Lawyer, Thelma Siglos, Public representative
23. David Renwick, QC, Chair, Dan Goodleaf, Public representative, Sandra Weafer, Lawyer
24. David Renwick, QC, Chair, Dan Goodleaf, Public representative, Sandra Weafer, Lawyer
25. Lee Ongman, Chair, Glenys Blackadder, Public representative, Jennifer M. Reid, Lawyer
26. David Renwick, QC, Chair Haydn Acheson Rita Andreone, QC Ben Meisner Nancy Merrill Lee Ongman Thelma O'Grady Catherine Sas, QC
27. Barry Zacharias, Chair, Woody Hayes, Public Representative, John Waddell, QC, Lawyer
28. Lee Ongman, Chair, Jasmin Z. Ahmad, Lawyer, Jory C. Faibish, Public representative
29. Leon Getz, QC, Chair, David Crossin, QC, Lynal Doerksen, Miriam Kresivo, QC, Benjimen Meisner, Nancy Merrill, Gregory Petrisor, David Renwick, QC, Tony Wilson

1.

Jeffrey Robert Arndt | *Decision of Hearing Panel*

2013 LSBC 38 Decision issued : December 20 , 2013 Oral Reasons : May 28 , 2013 Citation issued : November 9 , 2012 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Jeffrey Robert Arndt Respondent Decision of the Hearing Panel H... [Read full decision](#)

Gregory Petrisor, Chair, Carol W. Hickman, QC, Lawyer, Graeme Roberts, Public representative

2.

Roger Dwight Batchelor | *Decision of Hearing Panel*

2013 LSBC 09 Report issued : March 18 , 2013 Oral Reasons : February 15 , 2013 Citation issued : October 1 , 2012 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning ROGER DWIGHT BATCHELOR Respondent CORRECTED DECISION : PARAGRAPH... [Read full decision](#)

David Mossop, QC, Chair, Satwinder Bains, Public Representative, James E. Dorsey, QC, Lawyer

3.

Nathan Richard Bauder | *Decision on Disciplinary Action*

2013 LSBC 07 Report issued : February 13 , 2013 Citation issued : June 24 , 2011 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning NATHAN RICHARD BAUDER Respondent Decision of the Hearing Panel on Disciplinary Action Hearing dat... [Read full decision](#)

Panel: Leon Getz, QC, Chair, Jan Lindsay, QC, David Renwick, QC

4.

Crystal Irene Buchan | *Decision on Facts, Determination and Disciplinary Action* 2013

LSBC 08 Report issued : March 06 , 2013 Oral Reasons : February 13 , 2013 Citation issued : December 4 , 2012 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Crystal Irene Buchan Respondent Decision of the Hearing Panel H... [Read full decision](#)

Panel: Leon Getz, QC, Chair, Paula Cayley, Public Representative, William Sundhu, Lawyer

5.

Vivian Pei-Hua Chiang | *Decision on Disciplinary Action*

2013 LSBC 28 Report issued : September 25 , 2013 Citation issued : May 11 , 2007 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning VIVIAN CHIANG Respondent Decision of the Hearing Panel on Disciplinary Action Hearing date : Augu... [Read full decision](#)

Panel: Thelma O'Grady, Chair, Ralston S. Alexander, QC, Karl F. Warner, QC

6.

Vivian Pei-Hua Chiang | *Decision on Application for Stay of Proceedings*

2013 LSBC 30 Report issued : November 04 , 2013 Citation issued : May 11 , 2007 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Vivian Chiang Respondent Decision on Application for Stay of Proceedings Application date : Octobe... [Read full decision](#)

President's Designate: Lynal Doerksen

7.

Laird Russell Cruickshank | *Decision on Facts and Determination*

2013 LSBC 06 Report issued : February 13 , 2013 Citation issued : February 22 , 2012 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Laird Russell Cruickshank Respondent Decision of the Hearing Panel
Hearing date : December 18... [Read full decision](#)

Panel: Vincent Orchard, QC, Chair, Don Amos, Public Representative, Jennifer Chow, Lawyer

8.

Laird Russell Cruickshank | *Decision on Disciplinary Action*

2013 LSBC 21 Report issued : August 14 , 2013 Citation issued : February 22 , 2012 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning LAIRD RUSSELL CRUICKSHANK Respondent Decision of the Hearing Panel on Disciplinary Action Heari... [Read full decision](#)

Panel: Vincent Orchard, QC, Chair, Don Amos, Public Representative, Jennifer Chow, Lawyer

9.

Robert Mitchell Culos | *Decision on Facts, Determination and Disciplinary Action*

2013 LSBC 19 Report issued : July 08 , 2013 Oral Reasons : May 7 , 2013 Citation issued : July 30 , 2012 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Robert Mitchell Culos Respondent Decision of the Hearing Panel on Facts , ... [Read full decision](#)

Kenneth Walker, QC, Chair, John Lane, Public representative, Karen Nordlinger, QC, Lawyer

10.

Philip Richard Derksen | *Decision on Facts, Determination and Disciplinary action*

2013 LSBC 33 Decision issued : November 27 , 2013 Oral decision on Facts and Determination : June 20 , 2013 : Citation issued : April 9 , 2013 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning PHILIP RICHARD DERKSEN Respondent D... [Read full decision](#)

Panel: Greg Petrisor, Chair, John Ferguson, Public representative, Shona Moore, QC, Lawyer

11.

Stanley Chang Woon Foo | *Decision on Facts and Determination*

2013 LSBC 26 Report issued : September 6 , 2013 Citation issued : September 26 , 2012 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning STANLEY CHANG WOON FOO Respondent Decision of the Hearing Panel on Facts and Determination H... [Read full decision](#)

Panel: Thomas P. Fellhauer, Chair, Gavin Hume, QC, Lawyer, Lance Ollenberger, Public representative

12.

Rudi Gellert | *Decision on Facts and Determination*

2013 LSBC 22 Report issued : August 26 , 2013 Citation issued : December 18 , 2012 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning RUDI GELLERT Respondent Decision of the Hearing Panel on Facts and Determination Hearing date :... [Read full decision](#)

Panel: David Renwick, QC, Chair, Dennis Day, Public Representative, David Layton, Lawyer

13.

Thomas Paul Harding | *Decision on Application to Re-open the Hearing to Hear Further Evidence*

2013 LSBC 10 Report issued : March 26 , 2013 Citations issued : October 18 , 2010 and June 1 , 2011 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning THOMAS PAUL HARDING Respondent Decision of the Hearing Panel on an Application... [Read full decision](#)

Panel: Bruce LeRose, QC, Chair, William Everett, QC, Lawyer, June Preston, Public Representative

14.

Thomas Paul Harding | *Decision on Facts and Determination*

2013 LSBC 25 Report issued : August 30 , 2013 Citations issued : October 18 , 2010 and June 1 , 2011 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning THOMAS PAUL HARDING Respondent Decision of the Hearing Panel on Facts and Det... [Read full decision](#)

Panel: Bruce LeRose, QC, Chair, William Everett, QC, Lawyer, June Preston, Public Representative

15.

Thomas John Johnston | *Decision of Hearing Panel*

2013 LSBC 04 Report issued : January 25 , 2013 Oral Reasons on Facts and Determination : November 14 , 2012 Citation issued : December 15 , 2011 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Thomas John Johnston Respondent D... [Read full decision](#)

Panel: Gregory Petrisor, Chair, Dennis Day, Public Representative, David Layton, Lawyer

16.

Brian John Kirkhope | *Decision on Facts and Determination*

2013 LSBC 18 Report issued : July 04 , 2013 Citation issued : February 28 , 2012 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning BRIAN JOHN KIRKHOPE Respondent Decision of the Hearing Panel on Facts and Determination Hearing d... [Read full decision](#)

Panel: Thomas P. Fellhauer, Chair, Ralston Alexander, QC, Lawyer, Patrick Kelly, Public representative

17.

Brian John Kirkhope | *Decision on Disciplinary Action - Suspension start date varied to Feb. 14/14*

2013 LSBC 35 Report issued : December 13 , 2013 Citation issued : February 28 , 2012 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Brian John Kirkhope Respondent Decision of the Hearing Panel on Disciplinary Action Hearing d... [Read full decision](#)

Panel: Thomas P. Fellhauer, Chair, Ralston Alexander, QC, Lawyer, Patrick Kelly, Public representative

18.

Aaron Murray Lessing | *Decision of the Benchers on Review*

2013 LSBC 29 Report issued : October 16 , 2013 Citations issued : March 23 , 2011 and July 28 , 2011 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Aaron Murray Lessing Respondent Decision of the Benchers on Review Review dat... [Read full decision](#)

Jan Lindsay, QC, Chair, Satwinder Bains, Lynal E. Doerksen, Benjimen Meisner, David Mossop, QC, Thelma O'Grady, Gregory Petrisor

19.

William Jacob Mastop | *Decision of the Benchers*

2013 LSBC 37 Report issued : December 20 , 2013 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a referral to the Benchers under Rule 4 - 40 concerning William Jacob Mastop Decision of the Benchers Hearing date : November 13 , 2013 Benchers : Leon... [Read full decision](#)

Leon Getz, QC, Chair, Lynal Doerksen, Jan Lindsay, QC, Benjimen Meisner, Thelma O'Grady, Lee Ongman, David Renwick, QC, Kenneth Walker, QC

20.

Glenn John Niemela | *Decision on Facts, Determination and Disciplinary Action* 2013

LSBC 15 Report issued : June 13 , 2013 Oral decision on Facts and Determination : February 26 , 2013 Citation issued : The Law Society of British Columbia In the matter of the

Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning GLENN JOHN NIEMELA
Respondent Corrected Decision : Par... [Read full decision](#)

Thomas P. Fellhauer, Chair, Richard Lindsay, QC, Lawyer, Laura Nashman, Public representative

21.

Sean Patrick O'Neill | *Decision on Facts, Determination and Disciplinary Action*

2013 LSBC 23 Report issued : August 29 , 2013 Oral Reasons on Facts and Determination : June 25 , 2013 Citation issued : February 13 , 2013 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Sean Patrick O'Neill Respondent Decisi... [Read full decision](#)

Panel: David Mossop, QC, Chair, Adam Eneas, Public Representative, Dale G. Sanderson, QC, Lawyer

22.

John Edward Roberts | *Decision on Disciplinary Action*

2013 LSBC 14 Report issued : May 31 , 2013 Oral Reasons : May 8 , 2013 Citation issued : November 9 , 2011 Citation amended : August 28 , 2012 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning JOHN EDWARD ROBERTS Respondent Deci... [Read full decision](#)

David W. Mossop, QC, Chair, Shona A. Moore, QC, Lawyer, Thelma Siglos, Public representative

23.

Leanne Frances Rutley | *Decision on Facts and Determination*

2013 LSBC 16 Report issued : June 24 , 2013 Citation issued : July 27 , 2012 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning LEANNE FRANCES RUTLEY Respondent Decision of the Hearing Panel on Facts and Determination Hearing dat... [Read full decision](#)

David Renwick, QC, Chair, Dan Goodleaf, Public representative, Sandra Weafer, Lawyer

24.

Leanne Frances Rutley | *Decision on Disciplinary action*

2013 LSBC 32 Decision issued : November 27 , 2013 Citation issued : July 27 , 2013 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning LEANNE FRANCES RUTLEY Respondent Decision of the Hearing Panel on Disciplinary Action Hearing d... [Read full decision](#)

David Renwick, QC, Chair, Dan Goodleaf, Public representative, Sandra Weafer, Lawyer

25.

Amandeep Chandi Singh | *Decision on Facts, Determination and Disciplinary Action*

2013 LSBC 17 Report issued : July 05 , 2013 Oral Reasons on Facts and Determination : April 25 , 2013 Citation issued : October 4 , 2012 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning AMANDEEP CHANDI SINGH Respondent Decision... [Read full decision](#)

Panel: Lee Ongman, Chair, Glenys Blackadder, Public representative, Jennifer M. Reid, Lawyer

26.

Robert Collingwood Strother | *Decision on Jurisdiction for a Review under s 47*

2013 LSBC 01 Report issued : January 9 , 2013 Oral decision : December 6 , 2012 Citation issued : September 8 , 2009 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and an application concerning ROBERT COLLINGWOOD STROTHER RESPONDENT DECISION OF THE B... [Read full decision](#)

David Renwick, QC, Chair Haydn Acheson Rita Andreone, QC Ben Meisner Nancy Merrill Lee Ongman Thelma O'Grady Catherine Sas, QC

27.

Milan Matt Uzelac | *Decision of Hearing Panel*

2013 LSBC 11 Report issued : March 26 , 2013 Oral Reasons : January 30 , 2013 Citation issued : July 16 , 2012 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning MILAN MATT UZELAC Respondent Decision of the Hearing Panel Hearing... [Read full decision](#)

Barry Zacharias, Chair, Woody Hayes, Public Representative, John Waddell, QC, Lawyer

28.

Douglas Warren Welder | *Decision on Facts and Determination*

2013 LSBC 24 Report issued : August 30 , 2013 Citation issued : December 20 , 2012 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning DOUGLAS WARREN WELDER Respondent Decision of the Hearing Panel on Facts and Determination Heari... [Read full decision](#)

Panel: Lee Ongman, Chair, Jasmin Z. Ahmad, Lawyer, Jory C. Faibish, Public representative

29.

Malcolm Hassan Zoraik | *Decision of the Benchers - Court of Appeal set this decision aside*

2013 LSBC 13 Report issued : May 30 , 2013 DECISION SET ASIDE BY THE COURT OF APPEAL The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a referral to the Benchers under Rule 4 - 40 concerning MALCOLM HASSAN ZORAIK (A Non - practising member of the L... [Read full decision](#)

: Leon Getz, QC, Chair, David Crossin, QC, Lynal Doerksen, Miriam Kresivo, QC, Benjimen Meisner, Nancy Merrill, Gregory Petrisor, David Renwick, QC, Tony Wilson

2012 LSBC Decisions

2012 LSBC Discipline Committee Composition

[Discipline Reviews complaints concerning lawyers or articulated students who are referred by Law Society staff, the Complainants' Review Committee or other committees.

1. Herman Van Ommen, QC (chair)

Benchers:

2. Stacy Kuiack (vice-chair)
3. Bill Maclagan
4. Maria Morellato, QC
5. Claude Richmond
6. Phil Riddell
7. Richard Stewart, QC

Non-Benchers:

8. Craig Ferris
9. Anthony Vecchio

Conflicts of Interests -2012 (0)

2012

1. Leon Getz, QC, Chair, Jan Lindsay, QC, David Renwick, QC
2. Bruce LeRose, QC, Chair, Ralston S. Alexander, QC, Clayton G. Shultz, FCA 3. Tony Wilson, Bencher, Chair, Adam Eneas, Public representative Minority decision: Carol Hickman, QC, Lawyer
4. Gregory Petrisor, Chair, Linda Michaluk, Dale Sanderson, QC

5. Thelma O'Grady, Chair, Rita Andreone, QC, David Crossin, QC, Nancy Merrill, Lee Ongman, David Renwick, QC, Catherine Sas, QC, Barry Zackarias Minority decision: Vincent R.K. Orchard, QC
6. Leon Getz, QC, chair, Gregory Petrisor, Alan Ross
7. Leon Getz, QC, Chair, Nancy Merrill, Alan Ross
8. Leon Getz, QC, Chair, Robert Smith, Public representative, Gary Weatherill, QC, Lawyer
9. David Renwick, QC, Chair, Graeme Roberts, Donald Silversides, QC
10. : David Renwick, QC, Chair, Graeme Roberts, Public representative, Donald Silversides, QC, Lawyer
11. Gavin Hume, QC, Chair, Nancy Merrill, Thelma O'Grady
12. Joost Blom, QC, Chair, Don Amos, Alan Ross
13. Leon Getz, QC, Chair, Jennifer Chow, Dan Goodleaf
14. Leon Getz, QC, Bencher Chair, Jennifer Chow, Lawyer, Dan Goodleaf, Public representative
15. Patricia Bond, Chair, Dr. Gail Bellward, William Sundhu
16. Thelma O'Grady, Chair, David Crossin, QC, Nancy Merrill
17. Kenneth Walker, Chair, Gavin Hume, QC, Lois Serwa
18. David W. Mossop, QC, Chair, Shona A. Moore, QC, Lawyer, Thelma Siglos, Public representative
19. Thelma O'Grady, Chair, Jennifer Reid Minority decision: Carol Gibson
20. David Renwick, QC, Chair, Rita Andreone, Jan Lindsay, QC
21. Thelma O'Grady, Bencher, Chair, John Lane, Public representative, Sandra Weafer, Lawyer
22. Gavin Hume, QC, Gregory Petrisor, Alan Ross
23. Gavin Hume, QC, Chair, Gregory Petrisor, Alan Ross
24. Gavin Hume, QC, Chair, Gregory Petrisor, Alan Ross
25. Gavin Hume, QC, Chair, Bruce LeRose, QC, Thelma O'Grady
26. Tony Wilson, Chair, William Jackson, QC Minority decision: David Chiang
27. Thelma O'Grady, Chair, Leon Getz, QC, Gregory Petrisor
28. Thelma O'Grady, Chair, Glenys Blackadder, John M. Hogg, QC

1.

Nathan Richard Bauder | *Decision on Facts and Determination*

2012 LSBC 13 Report issued : April 26 , 2012 Citation issued : June 24 , 2011 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Nathan Richard Bauder Respondent Decision of the Hearing Panel on Facts and Determination Hearing da...[Read full decision](#)

Panel: Leon Getz, QC, Chair, Jan Lindsay, QC, David Renwick, QC

2.

Pamela Suzanne Boles | *Decision on Facts and Determination*

2012 LSBC 21 Report issued : June 11 , 2012 Citation issued : December 22 , 2010 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Pamela Suzanne Boles Respondent Decision of the Hearing Panel on Facts and Determination Hearing...[Read full decision](#)

Panel: Bruce LeRose, QC, Chair, Ralston S. Alexander, QC, Clayton G. Shultz, FCA

3.

Laird Russell Cruickshank | *Decision of Hearing Panel*

2012 LSBC 27 Report issued : August 22 , 2012 Oral Reasons : April 30 , 2012 Citations issued : May 5 , 2011 and February 16 , 2012 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Laird Russell Cruickshank Respondent Decision... [Read full decision](#)

Majority decision: Tony Wilson, Benchers, Chair, Adam Eneas, Public representative Minority decision: Carol Hickman, QC, Lawyer

4.

John Lyndon Decore | *Decision on Facts, Determination and Disciplinary Action*

2012 LSBC 17 Report issued : May 17 , 2012 Oral Reasons : March 23 , 2012 Citation issued : November 10 , 2011 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning John Lyndon Decore Respondent Decision of the Hearing Panel on Fact...[Read full decision](#)

Panel: Gregory Petrisor, Chair, Linda Michaluk, Dale Sanderson, QC

5.

Leonard Thomas Denovan Hill | *Decision on Review*

2012 LSBC 20 Report issued : June 01 , 2012 Citation issued : September 23 , 2010 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a section 47 review concerning Leonard Thomas Denovan Hill Applicant Decision of the Benchers on Review Review date :...[Read full decision](#)

Majority decision: Thelma O'Grady, Chair, Rita Andreone, QC, David Crossin, QC, Nancy Merrill, Lee Ongman, David Renwick, QC, Catherine Sas, QC, Barry Zackarias Minority decision: Vincent R.K. Orchard, QC

6.

Brian John Kirkhope | *Decision on Facts, Determination and Disciplinary Action* 2012

LSBC 05 Report issued : January 31 , 2012 Oral Reasons : October 25 , 2011 Citation issued : October 25 , 2010 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Brian John Kirkhope Respondent Decision of the Hearing Panel...[Read full decision](#)

Panel: Leon Getz, QC, chair, Gregory Petrisor, Alan Ross

[1] The citation in this matter was authorized by the Discipline Committee on September 30, 2010 and issued on October 25, 2010 (the “Citation”).

7.

Gerardus Martin Maria Laarakker | *Decision on Disciplinary Action*

2012 LSBC 02 Report issued : January 10 , 2012 Oral Reasons : December 1 , 2011 Citation issued : December 21 , 2010 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Gerardus Martin Maria Laarakker Respondent Decision of the He...[Read full decision](#)

Panel: Leon Getz, QC, Chair, Nancy Merrill, Alan Ross

8.

Karamgopal Paul Singh Lail | *Decision of the Hearing Panel*

2012 LSBC 32 Report issued : December 19 , 2012 Oral Reasons : September 20 , 2012 Citation issued : March 22 , 2012 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning KARAMGOPAL PAUL SINGH LAIL Respondent Decision of the Hearing... [Read full decision](#)

Panel: Leon Getz, QC, Chair, Robert Smith, Public representative, Gary Weatherill, QC, Lawyer

[1] The citation was authorized by the Discipline Committee on March 1, 2012, and issued March 22, 2012.

9.

Aaron Murray Lessing | *Decision on Facts and Determination*

2012 LSBC 19 Report issued : May 28 , 2012 Citations issued : March 23 , 2011 and July 28 , 2011 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning AARON MURRAY LESSING Respondent Corrected decision : Paragraph [45] of the deci...[Read full decision](#)

Panel: David Renwick, QC, Chair, Graeme Roberts, Donald Silversides, QC

[2] One of the citations in this matter (the “First Citation”) was authorized by the Discipline Committee on March 3, 2011 and issued on March 23, 2011. The First Citation was amended on June 1, 2011

10.

Aaron Murray Lessing | *Decision on Disciplinary Action*

2012 LSBC 29 Report issued : October 01 , 2012 Citations issued : March 23 , 2011 and July 28 , 2011 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC

1998 , c . 9 and a hearing concerning Aaron Murray Lessing Respondent CORRECTED
DECISION : PARAGRAPHS [19] , [24... [Read full decision](#)

Panel: David Renwick, QC, Chair, Graeme Roberts, Public representative, Donald Silversides, QC, Lawyer

11.

Andrew James Liggett | *Decision on Disciplinary Action*

2012 LSBC 07 Report issued : February 07 , 2012 Citation issued : December 21 , 2010 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Andrew James Liggett Respondent Decision of the Hearing Panel on Disciplinary Action Hearing...[Read full decision](#)

Panel: Gavin Hume, QC, Chair, Nancy Merrill, Thelma O'Grady

12.

Robert Douglas Cole Malcolm | *Decision on Facts, Determination and Disciplinary Action*

2012 LSBC 04 Report issued : January 18 , 2012 Oral Reasons : November 7 , 2011 Citation issued : August 8 , 2011 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Robert Douglas Malcolm Respondent Decision of the Hearing Panel...[Read full decision](#)

Panel: Joost Blom, QC, Chair, Don Amos, Alan Ross

13.

Daniel Markovitz | *Decision on Facts and Determination*

2012 LSBC 11 Report issued : March 07 , 2012 Oral Reasons : December 21 , 2011 Citation issued : December 16 , 2010 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning DANIEL MARKOVITZ Respondent Decision of the Hearing Panel on F... [Read full decision](#)

Leon Getz, QC, Chair, Jennifer Chow, Dan Goodleaf

[1] The citation in this matter was authorized by the Discipline Committee on November 4, 2010 and issued on December 16, 2010.

14.

Daniel Markovitz | *Decision on Disciplinary Action*

2012 LSBC 25 Report issued : July 11 , 2012 Citation issued : December 16 , 2010 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Daniel Markovitz Respondent Decision of the Hearing Panel on Disciplinary Action Hearing date : F... [Read full decision](#)

Panel: Leon Getz, QC, Benchers Chair, Jennifer Chow, Lawyer, Dan Goodleaf, Public representative

15.

Glenn John Niemela | *Decision on Facts, Determination and Disciplinary Action* 2012 LSBC 09 Report issued : February 17 , 2012 Oral Reasons : January 24 , 2012 Citation issued : October 28 , 2011 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Glenn John Niemela Respondent Decision of the Hearing Panel o...[Read full decision](#)

Panel: Patricia Bond, Chair, Dr. Gail Bellward, William Sundhu

16.

Roger Roy Plested | *Decision of Hearing Panel* 2012 LSBC 10 Report issued : February 23 , 2012 Citation issued : December 21 , 2010 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Roger Roy Plested Respondent Decision of the Hearing Panel Hearing date : November 16 , 2011...[Read full decision](#)

Panel: Thelma O'Grady, Chair, David Crossin, QC, Nancy Merrill

17.

Brian Clark Rea | *Decision of Hearing Panel* 2012 LSBC 22 Report issued : June 27 , 2012 Oral Reasons : April 18 , 2012 Citation issued : September 15 , 2012 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Brian Clark Rea Respondent Decision of the Hearing Panel Hearing... [Read full decision](#)

Kenneth Walker, Chair, Gavin Hume, QC, Lois Serwa

18.

John Edward Roberts | *Decision on Facts and Determination* 2012 LSBC 31 Report issued : December 17 , 2012 Citation issued : November 9 , 2011 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning JOHN EDWARD ROBERTS Respondent Decision of the Hearing Panel on Facts and Determination Hearin... [Read full decision](#)

Panel: David W. Mossop, QC, Chair, Shona A. Moore, QC, Lawyer, Thelma Siglos, Public representative

19.

Paris Ari Hart Simons | *Decision of Hearing Panel* 2012 LSBC 23 Report issued : July 03 , 2012 Citation issued : December 21 , 2010 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Paris Ari Hart Simons Respondent Decision of the Hearing Panel on Facts , Determination and Disci... [Read full decision](#)

Panel: Majority decision: Thelma O'Grady, Chair, Jennifer Reid Minority decision: Carol Gibson

20.

Mieszko Jan Skapski | *Decision of Hearing Panel*

2012 LSBC 08 Report issued : February 16 , 2012 Oral Reasons : September 14 , 2011 Citation issued : February 16 , 2011 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning John Skapski Respondent Decision of the Hearing Panel Hear...[Read full decision](#)

Panel: David Renwick, QC, Chair, Rita Andreone, Jan Lindsay, QC

21.

David Harvey Stoller | *Decision of Hearing Panel*

2012 LSBC 26 Report issued : July 20 , 2012 Citation issued : November 8 , 2011 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning David Harvey Stoller Respondent Decision of the Hearing Panel on Facts , Determination and Discipl... [Read full decision](#)

Panel: Thelma O'Grady, Bench, Chair, John Lane, Public representative, Sandra Weafer, Lawyer

22.

Robert Collingwood Strother | *Decision on Application Relating to Abuse of Process*

2012 LSBC 01 Report issued : January 04 , 2012 Citation issued : September 8 , 2009 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Robert Collingwood Strother Respondent Decision of the Hearing Panel on Respondent's Applicati...[Read full decision](#)

Panel: Gavin Hume, QC, Gregory Petrisor, Alan Ross

23.

Robert Collingwood Strother | *Decision on Preliminary Application*

2012 LSBC 14 Report issued : May 03 , 2012 Citation issued : September 8 , 2009 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Robert Collingwood Strother Respondent Corrected decision : Paragraph [33] of the decision was a...[Read full decision](#)

Panel: Gavin Hume, QC, Chair, Gregory Petrisor, Alan Ross

24.

Robert Collingwood Strother | *Decision on Application to Amend*

2012 LSBC 28 Report issued : September 11 , 2012 Citation issued : September 8 , 2009 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Robert Collingwood Strother Respondent Decision of the Hearing Panel in Respect of the Appli...[Read full decision](#)

Panel: Gavin Hume, QC, Chair, Gregory Petrisor, Alan Ross

25.

Gary Russell Vlug | *Decision on Disciplinary Action*

2012 LSBC 03 Report issued : January 18 , 2012 Citation issued : March 5 , 2009 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Gary Russell Vlug Respondent Decision of the Hearing Panel on Disciplinary Action Hearing date : D... Read full decision

Panel: Gavin Hume, QC, Chair, Bruce LeRose, QC, Thelma O'Grady

26.

Douglas Warren Welder | *Decision of Hearing Panel*

2012 LSBC 18 Report issued : May 17 , 2012 Oral Reasons : April 27 , 2012 Citation issued : March 22 , 2011 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Douglas Warren Welder Respondent Decision of the Hearing Panel Hearing...Read full decision

Panel: Majority decision: Tony Wilson, Chair, William Jackson, QC Minority decision: David Chiang

[1] This hearing was ordered in a citation authorized by the Discipline Committee on March 2, 2011, issued on March 22, 2011 and amended under Rule 4-16(1)(a) on November 30, 2011.

27.

Paul Cameron Wilson | *Decision of Hearing Panel*

2012 LSBC 06 Report issued : February 02 , 2012 Oral Reasons : September 27 , 2011 Citation issued : November 24 , 2010 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Paul Cameron Wilson Respondent Decision of the Hearing Pan...Read full decision

Panel: Thelma O'Grady, Chair, Leon Getz, QC, Gregory Petrisor

28.

Wallace Moon Wong | *Decision on Facts, Determination and Disciplinary Action*

2012 LSBC 15 Report issued : May 04 , 2012 Oral Reasons : February 6 , 2012 Citation issued : June 2 , 2011 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Wallace Moon Wong Respondent Decision of the Hearing Panel on Facts ,...Read full decision

Panel: Thelma O'Grady, Chair, Glenys Blackadder, John M. Hogg, QC

2011 LSBC Decisions

2011 LSBC Discipline Committee Composition

Reviews complaints concerning lawyers or articulated students that are referred by Law Society staff, the Complainants' Review Committee or other committee. Benchers:

1. Richard Stewart, QC (chair),
2. Herman Van Ommen (vicechair),
3. Kathryn Berge, QC,
4. Tom Fellhauer,
5. Stacy Kuiack,
6. Suzette Narbonne,
7. Claude Richmond

Non-Bencher:

8. Craig Ferris

Conflicts of Interest -2011 (2)

1. Richard Stewart - **Randall Keith McRoberts** - 2011 LSBC 04
2. Kathryn Berge, QC - **Randall Keith McRoberts** - 2011 LSBC 04

2011

1. David M. Renwick, QC, Chair, E. David Crossin, QC, Gregory Petrisor
2. Joost Blom, QC, Chair, Satwinder Bains, Gregory Petrisor
3. David Renwick, QC, Chair, Patricia Bond, Benjimen Meisner
4. Alan M. Ross
5. Carol Hickman, QC, Chair, David Mossop, QC, Gregory Petrisor
6. David Renwick, QC, Chair, Haydn Acheson, Patricia Bond
7. David Renwick, QC, Chair, Leon Getz, QC, Kenneth Walker
8. Bruce LeRose, QC, Chair, Leon Getz, QC, Benjimen Meisner
9. Bruce LeRose, QC, Chair, Leon Getz, QC, Benjamin Meisner
10. Bruce LeRose, QC, Chair, Leon Getz, QC, Benjamin Meisner

11. Leon Getz, QC, Chair, Nancy Merrill, Alan Ross
12. Bruce LeRose, QC, Chair, Haydn Acheson, Leon Getz, QC, Peter Lloyd, Thelma O'Grady, Lee Ongman, Gregory Petrisor
13. E. David Crossin, QC, Single Bench Panel
14. Gregory Petrisor, Alan Ross, Catherine Sas, QC, Kenneth Walker
Concurring decision: Leon Getz, QC Minority decision: Bruce A. LeRose, QC, Chair, Benjamin Meisner
15. Leon Getz, QC, Chair, Peter Lloyd, Lee Ongman
16. Joost Blom, QC, Chair, Patricia Bond, Peter Lloyd
17. Gavin Hume, QC, Chair, Nancy Merrill, Thelma O'Grady
18. Kenneth M. Walker, Chair, Benjamin Meisner, Gordon Turriff, QC
19. Richard Stewart, QC, Chair, Kathryn Berge, QC, David Mossop, QC
20. David Mossop, QC, Single Bench Panel
21. David Renwick, QC, Chair, Nancy Merrill, David Mossop, QC
22. Joost Blom, QC, Chair, David Mossop, QC, Kenneth Walker
23. Joost Blom, QC, Chair, David Mossop, QC, Kenneth Walker
24. Glen Ridgway, QC, Chair, Alan Ross
Minority Decision: Kenneth Walker
25. G. Glen Ridgway, QC, Chair, Alan Ross, Kenneth Walker
26. : Gavin Hume, QC, Chair, Bruce LeRose, QC, Thelma O'Grady
27. David Renwick, QC, Chair, Haydn Acheson, Rita Andreone, Patricia Bond, David Crossin, QC, David Mossop, QC, Thelma O'Grady, Gregory Petrisor
28. David M. Renwick, QC, Chair, Haydn Acheson, Rita Andreone, Patricia Bond, David Crossin, QC, David Mossop, QC, Thelma O'Grady, Gregory Pet
29. Leon Getz, QC, Chair, Robert Brun, QC, Alan Ross

1.

Edward Earle Bowes | *Decision on Facts, Determination and Disciplinary Action*

2011 LSBC 15 Report issued : June 06 , 2011 Citation issued : March 18 , 2010 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Edward Earle Bowes Respondent Decision of the Hearing Panel on Facts , Determination and Disciplinary... [Read full decision](#)

David M. Renwick, QC, Chair, E. David Crossin, QC, Gregory Petrisor

2.

Elizabeth Darlene Bryson | *Decision of the Hearing Panel*

2011 LSBC 19 Report issued : July 25 , 2011 Oral Reasons : June 23 , 2011 Citation issued : March 21 , 2011 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning ELIZABETH DARLENE BRYSON Respondent Decision of the Hearing Panel on F... [Read full decision](#)

Panel: Joost Blom, QC, Chair, Satwinder Bains, Gregory Petrisor

3.

David Stephen Rulton Burgess | *Decision of Hearing Panel*

2011 LSBC 03 Report issued : February 3 , 2011 Oral Reasons : December 2 , 2010 Citation issued : April 6 , 2010 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning David Stephen Rulton Burgess Respondent Decision of the Hearing P... [Read full decision](#)

David Renwick, QC, Chair, Patricia Bond, Benjimen Meisner

4.

David Stephen Rulton Burgess | *Decision of Chambers Bench*

2011 LSBC 07 Report issued : February 22 , 2011 Citation issued : April 6 , 2010 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and an application for a stay of penalty concerning David Stephen Rulton Burgess Respondent Decision of the Chambers Bench... [Read full decision](#)

Bench: Alan M. Ross

5.

Deepak Azad Chodha | *Decision of the Hearing Panel*

2011 LSBC 31 Report issued : September 23 , 2011 Citation issued : October 18 , 2010 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Deepak Azad Chodha Respondent Decision of the Hearing Panel Hearing date : May 12 , 2011 Pane... [Read full decision](#)

Panel: Carol Hickman, QC, Chair, David Mossop, QC, Gregory Petrisor

6.

Gregory Charles Cranston | *Decision on Facts, Determination and Disciplinary Action* 2011 LSBC 24 Report issued : August 24 , 2011 Oral Reasons (on Facts and Determination) : April 21 , 2011 Citation issued : October 27 , 2009 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Gregory Charles Cranston Responden... [Read full decision](#)

Panel: David Renwick, QC, Chair, Haydn Acheson, Patricia Bond

7.

Mark Ronald Epstein | *Decision on Facts, Determination and Disciplinary Action*

2011 LSBC 12 Report issued : April 15 , 2011 Oral Reasons : March 2 , 2011 Citation issued : September 28 , 2010 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Mark Ronald Epstein Respondent Decision of the Hearing Panel on F... [Read full decision](#)

Panel: David Renwick, QC, Chair, Leon Getz, QC, Kenneth Walker

8.

Leonard Thomas Denovan Hill | *Decision on Facts and Determination*

2011 LSBC 08 Report issued : March 03 , 2011 Citation issued : September 23 , 2010 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Leonard Thomas Denovan Hill Respondent Decision of the Hearing Panel on Facts and Determination... [Read full decision](#)

Panel: Bruce LeRose, QC, Chair, Leon Getz, QC, Benjimen Meisner

[1] The citation against the Respondent was authorized by the Discipline Committee on July 8, 2010 and issued on September 23, 2010.

9.

Leonard Thomas Denovan Hill | *Report on Disciplinary Action*

2011 LSBC 16 Report issued : June 29 , 2011 Oral Reasons : June 2 , 2011 Citation issued : September 23 , 2010 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Leonard Thomas Denovan Hill Respondent Decision of the Hearing Pane... [Read full decision](#)

Panel: Bruce LeRose, QC, Chair, Leon Getz, QC, Benjamin Meisner

The Law Society of British Columbia regulates the more than 10,000 lawyers in the province, setting and enforcing standards of professional conduct that ensure the public is well-served by a competent, honourable legal profession.

10.

Leonard Thomas Denovan Hill | *Corrigenda*

2011 LSBC 18 Report issued : July 18 , 2011 Citation issued : September 23 , 2010 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning LEONARD THOMAS DENO VAN HILL Respondent Corrigenda Panel : Bruce LeRose , QC , Chair , Leon Getz... [Read full decision](#)

Panel: Bruce LeRose, QC, Chair, Leon Getz, QC, Benjamin Meisner

11.

Gerardus Martin Maria Laarakker | *Decision on Facts and Determination*

2011 LSBC 29 Report issued : September 21 , 2011 Citation issued : December 21 , 2010 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Gerardus Martin Maria Laarakker Respondent Decision of the Hearing Panel on Facts and Determ... [Read full decision](#)

Leon Getz, QC, Chair, Nancy Merrill, Alan Ross

12.

Re: Lawyer 11 | *Decision of the Benchers on Review - Court of Appeal pending*

2011 LSBC 10 Report issued : March 11 , 2011 Oral Reasons : October 19 , 2010 Citation issued : January 16 , 2006 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Re : Lawyer 11 Applicant Decision of the Benchers on Review Revi... [Read full decision](#)

Benchers: Bruce LeRose, QC, Chair, Haydn Acheson, Leon Getz, QC, Peter Lloyd, Thelma O'Grady, Lee Ongman, Gregory Petrisor

13.

Re: Lawyer 12 | *Decision on Facts and determination*

2011 LSBC 11 Report issued : March 16 , 2011 Citation issued : August 4 , 2010 AS THE CITATION WAS DISMISSED THE PUBLICATION DOES NOT NAME THE RESPONDENT , PURSUANT TO RULE 4 - 38.1 (2) The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing c... [Read full decision](#)

Panel: E. David Crossin, QC, Single Benchers Panel

14.

Re: Lawyer 12 | *Decision on Review*

2011 LSBC 35 Report issued : December 12 , 2011 Report on Facts and determination issued : March 16 , 2011 Citation issued : August 4 , 2010 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a s . 47 review concerning Re : Lawyer 12 Respondent Decis... [Read full decision](#)

Benchers: Majority decision: Gregory Petrisor, Alan Ross, Catherine Sas, QC, Kenneth Walker Concurring decision: Leon Getz, QC Minority decision: Bruce A. LeRose, QC, Chair, Benjimen Meisner

15.

Re: Lawyer 13 | *Decision on Facts and Determination*

2011 LSBC 30 Report issued : September 21 , 2011 Citation issued : October 20 , 2010 PURSUANT TO RULE 4 - 38.1 (2) , AS THE CITATION IN THIS MATTER WAS DISMISSED BY THE PANEL THE REPORT IS PUBLISHED ANONYMOUSLY The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 199... [Read full decision](#)

Panel: Leon Getz, QC, Chair, Peter Lloyd, Lee Ongman

16.

Allan Edward Lester | *Decision on Facts, determination and disciplinary action* 2011

LSBC 28 Report issued : September 14 , 2011 Oral Reasons : July 28 , 2011 Citation issued : June 10 , 2011 The Law Society of British Columbia In the matter of the Legal Profession

Act , SBC 1998 , c . 9 and a hearing concerning Allan Edward Lester Respondent Decision of the Hearing Panel on Fa... [Read full decision](#)

Panel: Joost Blom, QC, Chair, Patricia Bond, Peter Lloyd

17.

Andrew James Liggett | *Decision on Facts and Determination*

2011 LSBC 22 Report issued : August 11 , 2011 Citation issued : December 21 , 2010 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Andrew James Liggett Respondent Decision of the Hearing Panel on Facts and Determination Hearin... [Read full decision](#)

Panel: Gavin Hume, QC, Chair, Nancy Merrill, Thelma O'Grady

18.

Donald Douglas McLellan | *Decision of Hearing Panel*

2011 LSBC 23 Report issued : August 23 , 2011 Oral Reasons : June 9 , 2011 Citation issued : November 4 , 2010 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Donald Douglas McLellan Respondent Decision of the Hearing Panel He... [Read full decision](#)

Panel: Kenneth M. Walker, Chair, Benjamin Meisner, Gordon Turriff, QC

19.

Randall Keith McRoberts | *Decision on Disciplinary Action*

2011 LSBC 04 Report issued : February 15 , 2011 Citation issued : October 10 , 2008 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Randall Keith McRoberts Respondent Decision of the Hearing Panel Hearing date : November 2 , 2... [Read full decision](#)

Panel: Richard Stewart, QC, Chair, Kathryn Berge, QC, David Mossop, QC

20.

Sanjeev Sanj Rai | *Decision of Hearing Panel*

2011 LSBC 02 Report issued : January 19 , 2011 Oral Reasons : November 24 , 2010 Citation issued : June 24 , 2009 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Sanjeev Sanj Rai Respondent Decision of the Hearing Panel Hearin... [Read full decision](#)

Panel: David Mossop, QC, Single Bench Panel

21.

Gerhard Ernst Schauble | *Decision of Hearing Panel*

2011 LSBC 27 Report issued : September 7 , 2011 Citation issued : August 10 , 2010 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Gerhard Ernst Schauble Respondent Decision of the Hearing Panel Hearing date : June 27 , 2011 P... [Read full decision](#)

Panel: David Renwick, QC, Chair, Nancy Merrill, David Mossop, QC

22.

Bradley Darryl TAK | *Decision on Facts and determination*

2011 LSBC 01 Report issued : January 6 , 2011 Oral Reasons : December 6m 2010 Citation issued : October 1 , 2010 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Bradley Darryl Tak Respondent Decision of the Hearing Panel Heari... [Read full decision](#)

Panel: Joost Blom, QC, Chair, David Mossop, QC, Kenneth Walker introduction [1] Bradley Darryl Tak, the Respondent, appeared at a summary hearing of a citation before a three-Bencher panel pursuant to Law Society Rule 4-24.1. [2] The schedule to the citation alleged failures to respond to communications from or on behalf of the Law Society, as follows: 1. You failed to comply with Rule 4-43(2)(b) of the Law Society Rules after an Order dated February 11, 2010 made by the Chair of the Discipline Committee was served on you on March 23, 2010, and/or you failed to respond promptly or at all to communications from or on behalf of the Law Society, contrary to Chapter 13, Rule 3 of the Professional Conduct

Handbook, and in particular, a) you did not immediately produce: i. a copy of the statement from a trust company, account number[number] for the period from 31 October to 28 November, 2008; ii. the deposit details, and a copy of all supporting documentation, from a trust company for the account number[number] for 3 December 2008 in the amount of \$2,700,

23.

Bradley Darryl TAK | *Decision on Disciplinary Action Phase of Summary Hearing*

2011 LSBC 05 Report issued : February 17 , 2011 Citation issued : October 1 , 2010 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Bradley Darryl Tak Respondent Decision of the Hearing Panel Hearing date : January 27 , 2011 Pa... [Read full decision](#)

Panel: Joost Blom, QC, Chair, David Mossop, QC, Kenneth Walker

24.

Christopher John Van Twest | *Decision on Facts and determination*

2011 LSBC 09 Report issued : March 10 , 2011 Citation issued : July 20 , 2010 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Christopher John Van Twest Respondent Decision of the Hearing Panel on Facts and Determination Heari... [Read full decision](#)

Panel: Majority Decision: Glen Ridgway, QC, Chair, Alan Ross Minority Decision: Kenneth Walker

25.

Christopher John Van Twest | *Decision on Disciplinary Action*

2011 LSBC 20 Report issued : July 26 , 2011 Citation issued : July 20 , 2010 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Christopher John Van Twest Respondent Decision of the Hearing Panel on Disciplinary Action Written Su... [Read full decision](#)

Panel: G. Glen Ridgway, QC, Chair, Alan Ross, Kenneth Walker

26.

Gary Russell Vlug | *Decision on Facts and Determination*

2011 LSBC 26 Report issued : August 31 , 2011 Citation issued : March 5 , 2009 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Gary Russell Vlug Respondent Decision of the Hearing Panel on Facts and Determination Hearing date... [Read full decision](#)

Panel: Gavin Hume, QC, Chair, Bruce LeRose, QC, Thelma O'Grady

27.

Douglas Warren Welder | *Decision of the Benchers on Review*

2011 LSBC 06 Report issued : February 18 , 2011 Citation issued : August 12 , 2009 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Douglas Warren Welder Respondent Decision of the Benchers on Review Review date : December 8 , ... [Read full decision](#)

Benchers: David Renwick, QC, Chair, Haydn Acheson, Rita Andreone, Patricia Bond, David Crossin, QC, David Mossop, QC, Thelma O'Grady, Gregory Petrisor

28.

Douglas Warren Welder | *Decision of the Benchers on Costs on Review*

2011 LSBC 13 Report issued : May 06 , 2011 Citation issued : August 12 , 2009 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Douglas Warren Welder Respondent Decision of the Benchers on Cost on Review Written Submissions Benc... [Read full decision](#)

Benchers: David M. Renwick, QC, Chair, Haydn Acheson, Rita Andreone, Patricia Bond, David Crossin, QC, David Mossop, QC, Thelma O'Grady, Gregory Petrisor

29.

Douglas Warren Welder | *Decision on Disciplinary Action*

2011 LSBC 25 Report issued : August 30 , 2011 Citation issued : August 12 , 2009 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a

hearing concerning Douglas Warren Welder Respondent Decision of the Hearing Panel on
Disciplinary Action Hearing dat... [Read full decision](#)

Panel: Leon Getz, QC, Chair, Robert Brun, QC, Alan Ross

2010 – LSBC Decisions

2010 LSBC Discipline Committee Benchers:

1. Art Vertlieb, QC (Chair)
2. Richard Stewart, QC (Vice-Chair)
3. Kathryn Berge, QC
4. Tom Fellhauer
5. Patrick Kelly
6. Stacy Kuiack
7. Jan Lindsay, QC
8. Suzette Narbonne
9. Claude Richmond
10. Herman Van Ommen

Non-Benchers:

11. Jennifer Duncan
12. Craig Ferris

Conflicts of Interest – 2010 (4)

1. Richard Stewart, QC - **Randall Keith McRoberts-** 2010 LSBC 17
2. Kathryn Berge, QC, Chair - **Randeep Singh Sarai -** 2010 LSBC 26
3. Stacy Kuiack - **Randeep Singh Sarai** - 2010 LSBC 26
4. Herman Van Ommen - **Re: Lawyer 10 -** 2010 LSBC 02

1.

David William Blinkhorn | *Decision on Penalty*

2010 LSBC 08 Report issued : April 21 , 2010 Citation issued : June 19 , 2007 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning David William Blinkhorn Respondent Decision of the Hearing Panel on Penalty
Hearing date : April 12... [Read full decision](#)

Leon Getz, QC, Chair, Haydn Acheson, Herman Van Ommen

2.

Donald Alexander Boyd | *Decision of Hearing Panel*

2010 LSBC 21 Report issued : September 9 , 2010 Oral Reasons : July 21 , 2010 Citation issued : November 20 , 2009 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Donald Alexander Boyd Respondent Decision of the Hearing Panel... [Read full decision](#)

Panel: David Renwick, QC, Single Benchers Panel

3.

Vivian Pei-Hua Chiang | *Decision of Benchers on Review*

2010 LSBC 29 Report issued : December 20 , 2010 Citation issued : May 11 , 2007 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Vivian Chiang Respondent Decision of the Benchers on Review Review date : September 30 , 2010 Quor... [Read full decision](#)

Quorum: G. Glen Ridgway, QC, Chair, Joost Blom, QC, Leon Getz, QC, Benjimen Meisner, Lee Ongman, Gregory Petrisor, Catherine Sas, QC

4.

John Lawrence Chipperfield | *Decision on Facts, verdict and penalty*

2010 LSBC 20 Report issued : August 31 , 2010 Oral Reasons : August 10 , 2010 Citation issued : July 8 , 2010 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning John Lawrence Chipperfield Respondent Decision of the Hearing Panel... [Read full decision](#)

Panel: Gavin Hume, QC, Chair, Peter Lloyd, Robert McDiarmid, QC

5.

George Coutlee | *Decision on Facts, Verdict and Penalty*

2010 LSBC 27 Report issued : December 16 , 2010 Citation issued : March 4 , 2010 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning George Coutlee Respondent Decision of the Hearing Panel on Facts , Verdict and Penalty Hearing da... [Read full decision](#)

Bruce LeRose, QC, Chair, Ralston S. Alexander, QC, Leon Getz, QC

6.

Robert John Cuddeford | *Decision on Facts, Verdict and Penatly*

2010 LSBC 11 Report issued : May 11 , 2010 Oral Reasons : May 5 , 2010 Citation issued : March 26 , 2010 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Robert John Cuddeford Respondent Decision of the Hearing Panel on Facts ,... [Read full decision](#)

Panel: Kenneth M. Walker, Single Benchers Panel

7.

Fiesal Ebrahim | *Decision of Hearing Panel*

2010 LSBC 14 Report issued : May 18 , 2010 Oral Reasons : March 25 , 2010 Citation issued : September 23 , 2009 The Law Society of British Columbia In the matter of the Legal Profession

Act , SBC 1998 , c . 9 and a hearing concerning Fiesal Ebrahim Respondent Decision of the Hearing Panel Hearing da... [Read full decision](#)

Panel: Gavin Hume, QC, Chair, Bruce LeRose, QC, Thelma O'Grady

[25] The Law Society and the Respondent agreed that costs in the amount of \$1,500 were reasonable. The Discipline Committee agreed with that. This Panel concludes that in the circumstances that was an appropriate amount.

8.

James Hu | *Decision of Hearing Panel*

2010 LSBC 10 Report issued : May 06 , 2010 Oral Reasons : March 31 , 2010 Citation issued : October 1 , 2009 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning James Hu Respondent Decision of the Hearing Panel Hearing date : Marc... [Read full decision](#)

Panel: David Renwick, QC, Chair, Rita Andreone, Peter Lloyd

[1] The citation in this matter was authorized by the Discipline Committee on July 9, 2009 and was issued against James Hu (the " Respondent") on October 1, 2009.

9.

Re: Lawyer 10 | *Decision on Review*

2010 LSBC 02 Report issued : January 05 , 2010 Citation issued : February 5 , 2008 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Re : Lawyer 10 Applicant Decision of the Benchers on Review Review date : December 10 , 2009 Be... [Read full decision](#)

Benchers: Majority decision: James Vilvang, QC, Chair, Carol Hickman, Ronald Tindale, Herman Van Ommen Minority decision: Barbara Levesque, Peter Lloyd, David Renwick, QC

10.

Re: Lawyer 11 | *Decision on Penalty*

2010 LSBC 01 Report issued : January 5 , 2010 Citation issued : January 16 , 2006 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Re : Lawyer 11 Respondent Decision of the Hearing Panel on Penalty Hearing date : December 5 , 2... [Read full decision](#)

Panel: Gordon Turriff, QC, Chair, David Renwick, QC, Warren Wilson, QC

11.

Re: Lawyer 11 | *Decision on the Application to Dismiss the Law Society's Supplemental Notice of Review*

2010 LSBC 22 Report issued : September 24 , 2010 Oral Reasons : September 1 , 2010 Citation issued : January 16 , 2006 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a section 47 review concerning Re : Lawyer 11 Respondent / Applicant Decision of... [Read full decision](#)

Benchers: Bruce LeRose, QC, Chair, Haydn Acheson, Leon Getz, QC, Peter Lloyd, Thelma O'Grady, Lee Ongman, Greg Petrisor, Alan Ross

12.

Douglas Edward Arthur LeBeau | *Decision on Facts, Verdict and Penalty*

2010 LSBC 12 Report issued : May 14 , 2010 Oral Reasons : May 6 , 2010 Citation issued : March 15 , 2010 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Douglas Edward Arthur LeBeau Respondent Decision of the Hearing Panel on... [Read full decision](#)

Panel: Gavin Hume, QC, Single Bencher Panel

13.

Christin Priscille Marcotte | *Decision on Facts, Verdict and Penalty*

2010 LSBC 18 Report issued : August 03 , 2010 Oral Reasons : June 30 , 2010 Citation issued : May 25 , 2010 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Christin Priscille Marcotte Respondent Decision of the Hearing Panel o... [Read full decision](#)

Panel: David Renwick, QC, Single bencher panel

14.

Henry Alexander McCandless | *Decision on Facts and Verdict*

2010 LSBC 03 Report issued : February 01 , 2010 Citation issued : April 18 , 2008 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Henry Alexander (Sandy) McCandless Respondent Decision of the Hearing Panel on Facts and Verdi... [Read full decision](#)

Panel: Bruce A. LeRose, QC, Chair, Haydn Acheson, William F.M. Jackson, QC

15.

Henry Alexander McCandless | *Decision on Penalty*

2010 LSBC 09 Report issued : April 30 , 2010 Citation issued : April 18 , 2008 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Henry Alexander (Sandy) McCandless Respondent Decision of the Hearing Panel on Penalty Hearing da... [Read full decision](#)

Panel: Bruce Lerose, QC, Chair, Haydn Acheson, William Jackson, QC

16.

Randall Keith McRoberts | *Decision on Facts and Verdict*

2010 LSBC 17 Report issued : July 27 , 2010 Citation issued : October 10 , 2008 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Randall Keith McRoberts Respondent Decision of the Hearing Panel on Facts and Verdict Hearing date... [Read full decision](#)

Panel: Richard Stewart, QC, Chair, Kathryn Berge, QC, David Mossop, QC

17.

Kheng Lee Ooi | *Decision of Hearing Panel*

2010 LSBC 06 Report issued : March 31 , 2010 Oral Reasons : March 23 , 2010 Citation issued : September 21 , 2009 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Kheng - Lee Ooi Respondent Decision of the Hearing Panel Hearing... [Read full decision](#)

Panel: Leon Getz, QC, Chair, Patricia Bond, Robert Brun, QC

18.

Richard Donald Payne | *Decision on Facts, Verdict and Penalty*

2010 LSBC 28 Report issued : December 16 , 2010 Citation issued : July 5 , 2010 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Richard Donald Payne Respondent Decision of the Hearing Panel on Facts , Verdict and Penalty Heari... [Read full decision](#)

Panel: David Mossop, QC, Single Benchers Panel

19.

Angela Marie Ross | *Decision of the Hearing Panel*

2010 LSBC 24 Report issued : October 8 , 2010 Oral Reasons : September 22 , 2010 Citation issued : August 19 , 2009 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Angela Marie Ross Respondent Decision of the Hearing Panel Hea... [Read full decision](#)

Panel: Gavin Hume, QC, Single Benchers Panel

20.

Randeep Singh Sarai | *Decision on Application for Reinstatement*

2010 LSBC 26 Report issued : December 16 , 2010 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Randeep Singh Sarai Respondent Decision of the Hearing Panel on Application for Reinstatement Hearing date : August 25 , 2010 Pane... [Read full decision](#)

Panel: Kathryn Berge, QC, Chair, Stacy Kuiack, Herman Van Ommen

21.

Bradley Darryl TAK | *Decision on Facts and Verdict*

2010 LSBC 07 Report issued : April 07 , 2010 Oral Reasons : January 27 , 2010 Citation issued : December 21 , 2009 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Bradley Darryl Tak Respondent Decision of the Hearing Panel on... [Read full decision](#)

Panel: David Renwick, QC, Chair, Leon Getz, QC, Thelma O'Grady

22.

Bradley Darryl TAK | *Decision on Penalty*

2010 LSBC 13 Report issued : May 14 , 2010 Oral Reasons : April 8 , 2010 Citation issued : December 21 , 2009 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Bradley Darryl Tak Respondent Decision of the Hearing Panel on Penal... [Read full decision](#)

Panel: David Renwick, QC, Chair, Leon Getz, QC, Thelma O'Grady

23.

Gary Russell Vlug | *Decision on Application to Adduce Rebuttal Evidence*

2010 LSBC 16 Report issued : July 22 , 2010 Citation issued : March 5 , 2009 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Gary Russell Vlug Respondent Decision of the Hearing Panel on Application to Adduce Rebuttal Evidence... [Read full decision](#)

Gavin Hume, QC, Chair, Bruce Lerose, QC, Thelma O'Grady

24.

Marianne Walters | *Decision of Hearing Panel*

2010 LSBC 15 Report issued : May 26 , 2010 Oral Reasons : May 18 , 2010 Citation issued : February 25 , 2010 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Marianne Walters Respondent Decision of the Hearing Panel Hearing dat... [Read full decision](#)

Panel: Bruce LeRose, QC, Chair, Joost Blom, QC, E. David Crossin, QC

25.

Douglas Warren Welder | *Decision of Chambers Bench*

2010 LSBC 04 Report issued : March 02 , 2010 Citation issued : August 12 , 2009 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and an application for an adjournment concerning Douglas Warren Welder Respondent Decision of the Chambers Bencher Applicat... [Read full decision](#)

Benchers: Joost Blom, QC

26.

Douglas Warren Welder | *Decision on Facts and Verdict*

2010 LSBC 05 Report issued : March 24 , 2010 Oral Reasons : March 4 , 2010 Citation issued : August 12 , 2009 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Douglas Warren Welder Respondent Decision of the Hearing Panel on Fa... [Read full decision](#)

Leon Getz, QC, Chair, Robert Brun, QC, Alan M. Ross

27.

Clayton Bruce Williams | *Decision of Hearing Panel*

2010 LSBC 31 Report issued : December 22 , 2010 Citation issued : August 5 , 2010 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Clayton Bruce Williams Respondent Decision of the Hearing Panel Hearing date : November 8 , 2010... [Read full decision](#)

Gavin Hume, QC, Chair, Haydn Acheson, Thelma O'Grady

2009 LSBC Discipline Decisions

2009 LSBC Discipline Committee Composition Discipline

Benchers:

1. Art Vertlieb, QC (Chair)
2. Robert Punnett, QC (Vice-Chair January-June),
3. Kenneth Walker (Vice-Chair June-December)
4. Patrick Kelly
5. Stacy Kuiack
6. Terence LaLiberté, QC
7. Jan Lindsay, QC
8. Suzette Narbonne
9. Jane Shackell, QC (Life Bencher)

Non-Benchers:

10. Dan Bennett
11. Jo Ann Carmichael, QC
12. Jennifer Duncan
13. Stephen Richards

Conflict of Interest - 2009 (1)

1. Robert D. Punnett, QC - **Richard Craig Nielsen** - 2009 LSBC 08

1. David Renwick, QC, Chair, Carol Hickman, David Mossop, QC
2. Leon Getz, QC, Chair, Haydn Acheson, David Mossop, QC
3. Leon Getz, QC, Chair, Haydn Acheson, Herman Van Ommen
4. Glen Ridgway, QC, Dr. Maelor Vallance Minority decision: Gordon Turriff, QC, Chair, Joost Blom, QC, Barbara Levesque, David Renwick, QC, James Vilvang, QC
5. William Jackson, Chair, Leon Getz, QC, Meg Shaw, QC
6. James Vilvang, QC, Chair, Haydn Acheson, David Mossop, QC
7. Thelma O'Grady, Chair, Karl F. Warner, QC Minority decision: Ralston S. Alexander, QC
8. G. Glen Ridgway, QC, Chair, Haydn Acheson, Leon Getz, QC, Thelma O'Grady, David Renwick, QC, Meg Shaw, QC, Ronald Tindale, Dr. Maelor Vallance
9. Bruce A. LeRose, QC, Chair, Dirk Sigalet, QC, Peter Warner, QC
10. Joost Blom, QC, Chair, David Mossop, QC, June Preston
11. James Vilvang, QC, Chair, Robert Brun, QC, Peter Lloyd
12. William Jackson, Chair, Leon Getz, QC, David Mossop, QC
13. G. Glen Ridgway, QC, Chair, William Jackson, Richard N. Stewart, QC
14. G. Glen Ridgway, QC, Chair, William Jackson, Richard N. Stewart, QC
15. David Renwick, QC, Warren Wilson, QC Concurring decision: Gordon Turriff, QC, Chair
16. Gavin Hume, QC, Chair, David Mossop, QC, David Renwick, QC
17. Gavin Hume, QC, Chair, David Mossop, QC, David Renwick, QC
18. Ralston Alexander, QC, Chair, G. Glen Ridgway, QC, David Zacks, QC
19. Robert D. Punnett, QC, Chair, David Mossop, QC, Thelma O'Grady
20. G. Glen Ridgway, QC, Chair, Barbara Levesque, Ronald Tindale
21. Gavin Hume, QC, Chair, Leon Getz, QC, Bruce LeRose, QC
22. G. Glen Ridgway, QC, Chair, Leon Getz, QC, Herman Van Ommen
23. Richard N. Stewart, QC, Chair, Kathryn A. Berge, QC, Leon Getz, QC
24. G. Glen Ridgway, QC, Chair, Joost Blom, QC, Kathryn Berge, QC, Leon Getz, QC, William Jackson, Barbara Levesque, Dr. Maelor Vallance
25. James D. Vilvang, QC, Chair, William F.M. Jackson, Brian J. Wallace, QC
26. James D. Vilvang, QC, Chair, William F.M. Jackson, Brian J. Wallace, QC
27. Bruce LeRose, QC, Chair, Leon Getz, QC, Peter Lloyd, David Mossop, QC, Thelma O'Grady, David Renwick, QC, Meg Shaw, QC, Herman Van Ommen
28. Bruce LeRose, QC, Chair, Leon Getz, QC, Peter Lloyd, David Mossop, QC, Thelma O'Grady, David Renwick, QC, Meg Shaw, QC, Herman Van Ommen
29. Gavin Hume, QC, Chair, Ralston Alexander, QC, Robert Brun, QC
30. David Renwick, QC, Chair, David Mossop, QC, Meg Shaw, QC
31. : Robert W. McDiarmid, QC, Chair, Ralston S. Alexander, QC, Thelma O'Grady
32. James Vilvang, QC, Chair, Haydn Acheson, Robert Brun, QC
33. Bruce LeRose, QC, Chair, Dr. Maelor Vallance, Herman Van Ommen

Jack Alexander Adelaar | *Decision on Penalty*

2009 LSBC 01 Report issued : January 23 , 2009 Citation issued : September 24 , 2007 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Jack Alexander Adelaar Respondent Decision of the Hearing Panel on Penalty Hearing date : Dec... [Read full decision](#)

Panel: David Renwick, QC, Chair, Carol Hickman, David Mossop, QC

2.

Trevors Ross Bjurman | *Decision of Hearing Panel*

2009 LSBC 05 Report issued : February 05 , 2009 Oral Reasons : November 20 , 2008 Citation issued : July 5 , 2007 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Trevors Ross Bjurman Respondent Decision of the Hearing Panel He... [Read full decision](#)

Leon Getz, QC, Chair, Haydn Acheson, David Mossop, QC

3.

David William Blinkhorn | *Decision on Facts and Verdict*

2009 LSBC 24 Report issued : August 12 , 2009 Citation issued : June 19 , 2007 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning David William Blinkhorn Respondent Decision of the Hearing Panel on Facts and Verdict Hearing date... [Read full decision](#) | *Trust Protection Coverage Payment*

Panel: Leon Getz, QC, Chair, Haydn Acheson, Herman Van Ommen

4.

Lu Chan | *Decision of Benchers on Review*

2009 LSBC 20 Report issued : June 25 , 2009 Citation issued : April 9 , 2008 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a section 47 review concerning Lu Chan Respondent Decision of the Benchers on Review Review date : April 3 , 2009 Benchers... [Read full decision](#)

Majority decision: Haydn Acheson, Carol Hickman, David Mossop, QC, Thelma O'Grady, G. Glen Ridgway, QC, Dr. Maelor Vallance Minority decision: Gordon Turriff, QC, Chair, Joost Blom, QC, Barbara Levesque, David Renwick, QC, James Vilvang, QC

5.

Lu Chan | *Decision on Penalty*

2009 LSBC 31 Report issued : October 21 , 2009 Oral Reasons : October 15 , 2009 Citation issued : April 9 , 2008 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Lu Chan Respondent Decision of the Hearing Panel on Penalty Heari... [Read full decision](#)

Panel: William Jackson, Chair, Leon Getz, QC, Meg Shaw, QC

6.

Eric Kai Chesterley | *Decision of Hearing Panel*

2009 LSBC 29 Report issued : October 06 , 2009 Oral Reasons : September 30 , 2009 Citation issued : January 28 , 2009 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Eric Kai Chesterley Respondent Decision of the Hearing Panel... [Read full decision](#)

Panel: James Vilvang, QC, Chair, Haydn Acheson, David Mossop, QC

7.

Vivian Chiang | *Decision on Facts and Verdict (citation dismissed) - See Bench Review December 20/10*

2009 LSBC 19 Report issued : June 17 , 2009 Citation issued : May 11 , 2007 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Vivian Chiang Respondent Decision of the Hearing Panel on Facts and Verdict Hearing date : October 7 a... [Read full decision](#)

Panel: Majority decision: Thelma O'Grady, Chair, Karl F. Warner, QC Minority decision: Ralston S. Alexander, QC

8.

Douglas Hewson Christie | *Decision on Review*

2009 LSBC 13 Report issued : April 30 , 2009 Citation issued : January 19 , 2006 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Douglas Hewson Christie Applicant Decision of the Benchers on Review Review date : December 11 ,... [Read full decision](#)

Quorum: G. Glen Ridgway, QC, Chair, Haydn Acheson, Leon Getz, QC, Thelma O'Grady, David Renwick, QC, Meg Shaw, QC, Ronald Tindale, Dr. Maelor Vallance

9.

Sheldon Goldberg | *Decision on Facts and Verdict*

2009 LSBC 18 Report issued : May 29 , 2009 Citation issued : August 14 , 2008 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Sheldon Goldberg Respondent Decision of the Hearing Panel on Facts and Verdict Hearing date : March... [Read full decision](#)

Panel: Bruce A. LeRose, QC, Chair, Dirk Sigalet, QC, Peter Warner, QC

[1] On August 14, 2008 a citation was issued against the Respondent pursuant to the Legal

Profession Act and Rule 4-13 of the Law Society Rules by the Executive Director of the Law Society on a direction from the Chair of the Discipline Committee. The citation, as amended, directed that this Panel inquire into the Respondent's conduct as follows:

10.

Takayuki Joseph Hattori | *Decision of Hearing Panel*

2009 LSBC 09 Report issued : March 19 , 2009 Oral Reasons : February 17 , 2009 Citation issued : December 8 , 2008 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Joseph Takayuki Hattori Respondent Decision of the Hearing Pane... [Read full decision](#)

Panel: Joost Blom, QC, Chair, David Mossop, QC, June Preston

11.

John Christopher Karlsson | *Decision of Hearing Panel*

2009 LSBC 03 Report issued : February 03 , 2009 Oral Reasons : January 22 , 2009 Citation issued : October 24 , 2008 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning John Christopher Karlsson Respondent Decision of the Hearing... [Read full decision](#)

Panel: James Vilvang, QC, Chair, Robert Brun, QC, Peter Lloyd

12.

Gregory John Lanning | *Decision on Penalty*

2009 LSBC 02 Report issued : January 29 , 2009 Citation issued : February 1 , 2008 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Gregory John Lanning Respondent Decision of the Hearing Panel on Penalty Hearing date : Novembe... [Read full decision](#)

l: William Jackson, Chair, Leon Getz, QC, David Mossop, QC

13.

Re: Lawyer 10 | *Decision on Facts and Verdict*

2009 LSBC 06 Report issued : February 11 , 2009 Citation issued : February 5 , 2008 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Re : Lawyer 10 Respondent Decision of the Hearing Panel on Facts and Verdict Hearing date : Se... [Read full decision](#)

G. Glen Ridgway, QC, Chair, William Jackson, Richard N. Stewart, QC

14.

Re: Lawyer 10 | *Decision on Penalty*

2009 LSBC 27 Report issued : September 9 , 2009 Citation issued : February 5 , 2009 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a

hearing concerning Re : Lawyer 10 Respondent Decision of the Hearing Panel on Penalty and Application for Anonymo... [Read full decision](#)

Panel: G. Glen Ridgway, QC, Chair, William Jackson, Richard N. Stewart, QC

15.

Re: Lawyer 11 | *Decision on Facts and Verdict*

2009 LSBC 26 Report issued : September 9 , 2009 Citation issued : January 16 , 2006 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Re : Lawyer 11 Respondent Decision of the Hearing Panel on Facts and Verdict Hearing date : Se... [Read full decision](#)

Panel: Majority decision: David Renwick, QC, Warren Wilson, QC Concurring decision: Gordon Turriff, QC, Chair

16.

Andrew James Liggett | *Decision on Facts and Verdict*

2009 LSBC 21 Report issued : July 14 , 2009 Citation issued : September 10 , 2008 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Andrew James Liggett Respondent Decision of the Hearing Panel on Facts and Verdict Hearing date... [Read full decision](#)

Gavin Hume, QC, Chair, David Mossop, QC, David Renwick, QC

17.

Andrew James Liggett | *Decision on Penalty*

2009 LSBC 36 Report issued : December 14 , 2009 Citation issued : September 10 , 2008 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Andrew James Liggett Respondent Decision of the Hearing Panel on Penalty Hearing date : Nove... [Read full decision](#)

Gavin Hume, QC, Chair, David Mossop, QC, David Renwick, QC

18.

Mimi Mankiu Luk | *Decision of Three Benchers*

2005 LSBC 44 Report issued : October 11 , 2005 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a s . 39 proceeding concerning Mimi Mankui Luk Respondent Decision of Three Benchers Hearing date : October 7 , 2005 Panel : Ralston Alexander , QC , Ch... [Read full decision](#)

Panel: Ralston Alexander, QC, Chair, G. Glen Ridgway, QC, David Zacks, QC

19.

Richard Craig Nielsen | *Decision of Hearing Panel*

2009 LSBC 08 Report issued : March 04 , 2009 Oral Reasons : December 9 , 2008 Citation issued : April 26 , 2007 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Richard Craig Nielsen Respondent Decision of the Hearing Panel Hea... [Read full decision](#)

Robert D. Punnett, QC, Chair, David Mossop, QC, Thelma O'Grady

20.

Robert John Palkowski | *Decision of Hearing Panel*

2009 LSBC 35 Report issued : December 01 , 2009 Oral Reasons : November 27 , 2009 Citation issued : June 23 , 2009 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Robert John Palkowski Respondent Decision of the Hearing Panel... [Read full decision](#)

G. Glen Ridgway, QC, Chair, Barbara Levesque, Ronald Tindale

21.

Lawrence Everett Pierce | *Decision on Facts and Verdict*

2009 LSBC 10 Report issued : April 01 , 2009 Citation issued : December 15 , 2006 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Lawrence Everett Pierce Respondent Decision of the Hearing Panel on Facts and Verdict Hearing da... [Read full decision](#)

Gavin Hume, QC, Chair, Leon Getz, QC, Bruce LeRose, QC

22.

Harold Garrett Power | *Decision on Facts, Verdict and Penalty*

2009 LSBC 23 Report issued : July 24 , 2009 Oral decision on Facts and Verdict : July 15 , 2009 Citation issued : May 14 , 2009 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Harold Garrett Power Respondent Decision of the He... [Read full decision](#)

G. Glen Ridgway, QC, Chair, Leon Getz, QC, Herman Van Ommen

23.

Barry Joseph Promislow | *Decision on Penalty*

2009 LSBC 04 Report issued : February 05 , 2009 Citation issued : June 19 , 2007 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Barry Joseph Promislow Respondent Decision of the Hearing Panel on Penalty Hearing date : Decembe... [Read full decision](#)

Richard N. Stewart, QC, Chair, Kathryn A. Berge, QC, Leon Getz, QC

24.

John Owen Richardson | *Decision on Review*

2009 LSBC 07 Report issued : February 11 , 2009 Citation issued : April 12 , 2006 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a section 47 review concerning John Owen Richardson Applicant Decision of the Benchers on Review Review date : Octobe... [Read full decision](#)

G. Glen Ridgway, QC, Chair, Joost Blom, QC, Kathryn Berge, QC, Leon Getz, QC, William Jackson, Barbara Levesque, Dr. Maelor Vallance

25.

Gerhard Ernst Schauble | *Decision on Facts and Verdict*

2009 LSBC 11 Report issued : April 16 , 2009 Citation issued : February 6 , 2007 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Gerhard Schauble Respondent Decision of the Hearing Panel on Facts and Verdict Hearing dates : Ju... [Read full decision](#)

Panel: James D. Vilvang, QC, Chair, William F.M. Jackson, Brian J. Wallace, QC

26.

Gerhard Ernst Schauble | *Decision on Penalty*

2009 LSBC 32 Report issued : October 23 , 2009 Citation issued : February 6 , 2007 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Gerhard Ernst Schauble Respondent Decision of the Hearing Panel on Penalty Hearing date : Octob... [Read full decision](#)

Panel: James D. Vilvang, QC, Chair, William F.M. Jackson, Brian J. Wallace, QC

27.

Michael Curt Scholz | *Decision of the Benchers on Review*

2009 LSBC 33 Report issued : November 24 , 2009 Citation issued : August 9 , 2006 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a section 47 review concerning Michael Curt Scholz Applicant Decision of the Benchers on Review Review date : Septemb... [Read full decision](#)

Quorum: Bruce LeRose, QC, Chair, Leon Getz, QC, Peter Lloyd, David Mossop, QC, Thelma O'Grady, David Renwick, QC, Meg Shaw, QC, Herman Van Ommen

28.

Michael Curt Scholz | *Corrigenda*

2009 LSBC 34 Report issued : November 24 , 2009 Corrigenda issued : November 26 , 2009 Citation issued : August 9 , 2006 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Michael Curt Scholz Applicant Corrigenda Benchers : Bruce... [Read full decision](#)

Quorum: Bruce LeRose, QC, Chair, Leon Getz, QC, Peter Lloyd, David Mossop, QC, Thelma O'Grady, David Renwick, QC, Meg Shaw, QC, Herman Van Ommen

29.

Michael Lee Seifert | *Decision on Facts, Verdict and Penalty*

2009 LSBC 17 Report issued : May 25 , 2009 Oral decision on facts and verdict : Citation issued : July 15 , 2005 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Michael Lee Seifert Respondent Decision of the Hearing Panel on F... [Read full decision](#)

Panel: Gavin Hume, QC, Chair, Ralston Alexander, QC, Robert Brun, QC

30.

Alan James Short | *Decision on Penalty*

2009 LSBC 12 Report issued : April 23 , 2009 Citation issued : November 7 , 2006 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Alan James Short Respondent Decision of the Hearing Panel on Penalty Hearing date : Written submi... [Read full decision](#)

Panel: David Renwick, QC, Chair, David Mossop, QC, Meg Shaw, QC

31.

Donald Wayne Skogstad | *Decision on Penalty*

2009 LSBC 16 Report issued : May 22 , 2009 Oral decision : May 20 , 2009 Citation issued : February 15 , 2005 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Donald Wayne Skogstad Respondent Decision of the Hearing Panel on Pe... [Read full decision](#)

Panel: Robert W. McDiarmid, QC, Chair, Ralston S. Alexander, QC, Thelma O'Grady

32.

Kenneth Joseph Spears | *Decision of Hearing Panel*

2009 LSBC 28 Report issued : September 24 , 2009 Oral Reasons : September 17 , 2009 Citation issued : April 21 , 2009 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Kenneth Joseph Spears Respondent Decision of the Hearing Pan... [Read full decision](#)

Panel: James Vilvang, QC, Chair, Haydn Acheson, Robert Brun, QC

33.

Bradley Darryl TAK | *Decision on Facts, Verdict and Penalty*

2009 LSBC 25 Report issued : September 2 , 2009 Oral Reasons : July 21 , 2009 Citation issued : May 25 , 2009 The Law Society of British Columbia In the matter of the Legal Profession Act ,

SBC 1998 , c . 9 and a hearing concerning Bradley Darryl Tak Respondent Decision of the Hearing Panel on Facts... Read full decision

Panel: Bruce LeRose, QC, Chair, Dr. Maelor Vallance, Herman Van Ommen

2008 LSBC DISCIPLINE DECISIONS

2008 LSBC Discipline Committee Composition

Discipline

Benchers:

1. Rita Andreone (Chair)
2. Arthur Vertlieb, QC (Vice-Chair)
3. Patrick Kelly
4. Stacy Kuiack
5. Terence LaLiberté, QC
6. Jan Lindsay
7. Kenneth Walker
8. David Zacks, QC
9. Jane Shackell, QC (Life Bencher)

Non-Benchers:

10. Dan Bennett
11. Jo Ann Carmichael, QC
12. Jennifer Duncan
13. Stephen Richards

Conflicts of Interest -2008 (1)

1. David A. Zacks, QC - **John Owen Richardson - 2008 LSBC 05**

2008

1. David Renwick, QC, Chair, Carol Hickman, David Mossop, QC
2. G. Glen Ridgway, QC, Chair, Ralston S. Alexander, QC, Robert C. Brun, QC
3. Leon Getz, QC, Chair, Kathryn Berge, QC, David Renwick, QC
4. William Jackson, Chair, Leon Getz, QC, Meg Shaw, QC
5. Robert M. McDiarmid, QC, Chair, Gavin Hume, QC, James D. Vilvang, QC
6. Robert M. McDiarmid, QC, Chair, Gavin Hume, QC, James D. Vilvang, QC
7. G. Glen Ridgway, QC, Chair, Emily Reid, QC, Robert D. Punnett
8. G. Glen Ridgway, QC, Chair, Bruce A. LeRose, QC, William Jackson

9. Leon Getz, QC, Chair, Kenneth M. Walker, Ralston S. Alexander, QC
10. John J.L. Hunter, QC
11. Gordon Turriff, QC, Chair, Kathryn A. Berge, QC, Robert C. Brun, QC, Peter B. Lloyd, David W. Mossop, QC, David M. Renwick, QC, Marguerite (Meg) Shaw, QC
12. Joost Blom, QC, Chair, Richard N. Stewart, QC, Ronald S. Tindale
13. James D. Vilvang, QC, Chair, William Jackson, Robert C. Brun, QC
14. William Jackson, Chair, Leon Getz, QC, David Mossop, QC
15. Leon Getz, QC, Chair Majority decision: Russell S. Tretiak, QC Concurring decision: Dr. Maelor Vallance
16. Robert Brun, QC, Peter Lloyd, David Mossop, QC, Thelma O'Grady, David Renwick, QC Minority decision: G. Glen Ridgway, QC, Chair, Joost Blom, QC, William
17. : G. Glen Ridgway, QC, Chair, Thelma O'Grady, Robert Brun, QC
18. G. Glen Ridgway, QC, Chair, Thelma O'Grady, Robert Brun, QC
19. Kathryn A. Berge, QC, Chair, Anna K. Fung, QC, Thelma O'Grady
20. Kathryn A. Berge, QC, Chair, Anna K. Fung, QC, Thelma O'Grady
21. Kathryn A. Berge, QC, Chair, Anna K. Fung, QC, Thelma O'Grady
22. William Jackson, Chair, Haydn Acheson, Kathryn Berge, QC
23. William Jackson, Chair, Haydn Acheson, Kathryn Berge, QC
24. G. Glen Ridgway, QC, Chair, June Preston, Ronald Tindale
25. Richard N. Stewart, QC, Chair, Kathryn A. Berge, QC, Leon Getz, QC
26. David A. Zacks, QC, Chair, Thelma J. O'Grady, David M. Renwick, QC
27. John J.L. Hunter, QC
28. G. Glen Ridgway, QC, Chair, Richard N. Stewart, Dirk J. Sigalet, QC
29. G. Glen Ridgway, QC, Chair, Richard N. Stewart, Dirk J. Sigalet, QC
30. David Renwick, QC, Chair, Meg Shaw, QC, David Mossop, QC
31. Robert W. McDiarmid, QC, Chair, Thelma O'Grady, Ralston S. Alexander, QC
32. Bruce A. LeRose, QC, Chair, Gerald Lecovin, QC, Gavin Hume, QC
33. G. Glen Ridgway, QC, Chair, Gavin Hume, QC, Bruce LeRose, QC
34. Carol Hickman, Chair, William Sullivan, QC, Robert Brun, QC
35. James D. Vilvang, QC, Chair, Joost Blom, QC, Leon Getz, QC

1.

Jack Alexander Adelaar | *Decision on Facts and Verdict*

2008 LSBC 18 Report issued : July 2 , 2008 Citation issued : September 24 , 2007 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Jack Alexander Adelaar Respondent Decision of the Hearing Panel on Facts and Verdict Hearing date... [Read full decision](#)

David Renwick, QC, Chair, Carol Hickman, David Mossop, QC

2.

Raymond William Barton | *Decision on Penalty*

2008 LSBC 25 Report issued : August 14 , 2008 Citation issued : March 8 , 2006 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Raymond William Barton Respondent Decision of the Hearing Panel on Penalty Hearing date : July 3 ,... [Read full decision](#)

G. Glen Ridgway, QC, Chair, Ralston S. Alexander, QC, Robert C. Brun, QC

3.

Andrew James Bonfield | *Decision of Hearing Panel*

2008 LSBC 23 Report issued : July 29 , 2008 Citation issued : February 15 , 2008 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Andrew James Bonfield Respondent Decision of the Hearing Panel Hearing date : June 25 , 2008 Pane... [Read full decision](#)

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

4.

Lu Chan | *Decision on Facts and Verdict*

2008 LSBC 30 Report issued : September 19 , 2008 Citation issued : April 9 , 2008 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Lu Chan Respondent Decision of the Hearing Panel on Facts and Verdict Hearing date : August 27 ,... [Read full decision](#)

William Jackson, Chair, Leon Getz, QC, Meg Shaw, QC

5.

Douglas Hewson Christie | *Decision on Preliminary Application*

2008 LSBC 15 Report issued : May 29 , 2008 Oral Reasons : December 5 , 2006 Citation issued : June 19 , 2006 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Douglas Hewson Christie Respondent Decision of the Hearing Panel on P... [Read full decision](#)

Robert M. McDiarmid, QC, Chair, Gavin Hume, QC, James D. Vilvang, QC

6.

Douglas Hewson Christie | *Decision on Penalty*

2008 LSBC 01 Report issued : January 15 , 2008 Oral Reasons : December 17 , 2007 Citation issued : June 19 , 2006 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Douglas Hewson Christie Respondent Decision of the Hearing Panel... [Read full decision](#)

Robert M. McDiarmid, QC, Chair, Gavin Hume, QC, James D. Vilvang, QC

7.

Bert Donald Currie | *Decision of Hearing Panel*

2008 LSBC 21 Report issued : July 14 , 2008 Oral Reasons : June 20 , 2008 Citation issued : April 24 , 2008 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Bert Donald Currie Respondent Decision of the Hearing Panel Hearing da... [Read full decision](#)

G. Glen Ridgway, QC, Chair, Emily Reid, QC, Robert D. Punnett

8.

Harry Augustine Sasah Djorgee | *Decision of Hearing Panel*

2008 LSBC 27 Report issued : September 04 , 2008 Oral Reasons : July 25 , 2008 Citation issued : October 23 , 2007 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Harry Djorgee Respondent Decision of the Hearing Panel Hearing... [Read full decision](#)

G. Glen Ridgway, QC, Chair, Bruce A. LeRose, QC, William Jackson

9.

Larry William Goddard | *Decision on Penalty*

2008 LSBC 14 Report issued : May 12 , 2008 Citation issued : May 3 , 2007 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Larry William Goddard Respondent Decision of the Hearing Panel on Penalty Hearing date : February 27 , 2... [Read full decision](#)

Leon Getz, QC, Chair, Kenneth M. Walker, Ralston S. Alexander, QC

10.

Sheldon Goldberg | *Decision on Application to Vary a Stay Order*

2008 LSBC 03 Report issued : January 25 , 2008 Citation issued : March 7 , 2006 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and an application to vary a stay of proceedings concerning Sheldon Goldberg Applicant Decision Application date : January 9... [Read full decision](#)

John J.L. Hunter, QC

11.

Sheldon Goldberg | *Decision of Benchers on Review*

2008 LSBC 13 Report issued : May 08 , 2008 Citation issued : March 7 , 2006 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Sheldon Goldberg Applicant Decision of the Benchers on Review Review date : February 12 , 2008 Benchers... [Read full decision](#)

Gordon Turriff, QC, Chair, Kathryn A. Berge, QC, Robert C. Brun, QC, Peter B. Lloyd, David W. Mossop, QC, David M. Renwick, QC, Marguerite (Meg) Shaw, QC

12.

Edward George Jackson | *Decision of Hearing Panel*

2008 LSBC 28 Report issued : September 12 , 2008 Citation issued : June 13 , 2007 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Edward George Jackson Respondent Decision of the Hearing Panel Hearing date : April 15 , 2008 Pa... [Read full decision](#)

Joost Blom, QC, Chair, Richard N. Stewart, QC, Ronald S. Tindale

13.

Kathryn Jayne Karst | *Decision of Hearing Panel*

2008 LSBC 11 Report issued : April 03 , 2008 Oral Reasons : March 27 , 2008 Citation issued : April 13 , 2007 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Kathryn Jayne Karst Respondent Decision of the Hearing Panel Hearing... [Read full decision](#)

James D. Vilvang, QC, Chair, William Jackson, Robert C. Brun, QC

14.

Gregory John Lanning | *Decision on Facts and Verdict*

2008 LSBC 31 Report issued : September 29 , 2008 Citation issued : February 1 , 2008 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Gregory John Lanning Respondent Decision of the Hearing Panel on Facts and Verdict Hearing da... [Read full decision](#)

William Jackson, Chair, Leon Getz, QC, David Mossop, QC

15.

Re: Lawyer 7 | *Decision of the Hearing Panel*

2008 LSBC 06 Report issued : February 11 , 2008 Citation issued : May 30 , 2007 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Re : Lawyer 7 Respondent Decision of the Hearing Panel Hearing date : November 21 , 2007 Panel : M... [Read full decision](#)

Minority decision: Leon Getz, QC, Chair Majority decision: Russell S. Tretiak, QC Concurring decision: Dr. Maelor Vallance

16.

Re Lawyer 7 | *Decision on Review*

2008 LSBC 33 Report issued : October 06 , 2008 Citation issued : May 30 , 2007 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Re : Lawyer 7 Respondent Decision of the Benchers on Review Review date : July 25 , 2008 Quorum : M... [Read full decision](#)

Majority decision: Robert Brun, QC, Peter Lloyd, David Mossop, QC, Thelma O'Grady, David Renwick, QC Minority decision: G. Glen Ridgway, QC, Chair, Joost Blom, QC, William Jackson, Bruce LeRose, QC

17.

Donald Eric Linge | *Decision of the Hearing Panel*

2008 LSBC 07 Report issued : March 10 , 2008 Oral Reasons : February 14 , 2008 Citation issued : November 7 , 2007 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Donald Eric Linge Respondent Decision of the Hearing Panel Hear... [Read full decision](#)

Panel: G. Glen Ridgway, QC, Chair, Thelma O'Grady, Robert Brun, QC

18.

Donald Eric Linge | *Corrigendum*

2008 LSBC 12 Corrigendum issued : April 10 , 2008 Report issued : March 10 , 2008 Citation issued : November 7 , 2007 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Donald Eric Linge Respondent Corrigendum Panel : G . Glen Ri... [Read full decision](#)

G. Glen Ridgway, QC, Chair, Thelma O'Grady, Robert Brun, QC

19.

Donald Andrew Lyons | *Decision on Facts and Verdict*

2008 LSBC 09 Report issued : March 14 , 2008 Citation issued : August 27 , 2007 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Donald Andrew Lyons Respondent Decision of the Hearing Panel on Facts and Verdict Hearing date : J... [Read full decision](#)

Panel: Kathryn A. Berge, QC, Chair, Anna K. Fung, QC, Thelma O'Grady

20.

Donald Andrew Lyons | *Corrigenda*

2008 LSBC 32 Report issued : March 14 , 2008 Corrigenda issued : September 29 , 2008 Citation issued : August 27 , 2007 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Donald Andrew Lyons Respondent Corrigenda Panel : Kathryn... [Read full decision](#)

Panel: Kathryn A. Berge, QC, Chair, Anna K. Fung, QC, Thelma O'Grady

21.

Donald Andrew Lyons | *Decision on Penalty*

2008 LSBC 38 Report issued : December 9 , 2008 Citation issued : August 24 , 2007 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Donald Andrew Lyons Respondent Decision of the Hearing Panel on Penalty Hearing date : October 2... [Read full decision](#)

Panel: Kathryn A. Berge, QC, Chair, Anna K. Fung, QC, Thelma O'Grady

22.

Glenn John Niemela | *Decision of Hearing Panel*

2008 LSBC 35 Report issued : October 23 , 2008 Oral Reasons : October 15 , 2008 Citation issued : May 21 , 2008 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Glenn John Niemela Respondent Decision of the Hearing Panel Hearin... [Read full decision](#)

William Jackson, Chair, Haydn Acheson, Kathryn Berge, QC

23.

Brian Borthwick Norton | *Decision on Facts and Verdict*

2008 LSBC 22 Report issued : July 29 , 2008 Citation issued : January 29 , 2008 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Brian Borthwick Norton Respondent Decision of the Hearing Panel on Facts and Verdict Hearing date... [Read full decision](#)

Panel: G. Glen Ridgway, QC, Chair, June Preston, Ronald Tindale

24.

Brian Borthwick Norton | *Decision on Penalty*

2008 LSBC 36 Report issued : November 25 , 2008 Citation issued : January 29 , 2008 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Brian Borthwick Norton Respondent Decision of the Hearing Panel on Penalty Hearing date : Nove... [Read full decision](#)

Panel: G. Glen Ridgway, QC, Chair, June Preston, Ronald Tindale

25.

Barry Joseph Promislow | *Decision on Facts and Verdict*

2008 LSBC 08 Report issued : March 10 , 2008 Citation issued : June 19 , 2007 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Barry Joseph Promislow Respondent Decision of the Hearing Panel on Facts and Verdict Hearing date :... [Read full decision](#)

Panel: Richard N. Stewart, QC, Chair, Kathryn A. Berge, QC, Leon Getz, QC

26.

John Owen Richardson | *Decision on Penalty*

2008 LSBC 05 Report issued : February 8 , 2008 Citation issued : April 12 , 2006 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning John Owen Richardson Respondent Decision of the Hearing Panel on Penalty Hearing date : December... [Read full decision](#)

Panel: David A. Zacks, QC, Chair, Thelma J. O'Grady, David M. Renwick, QC

27.

John Owen Richardson | *Decision on Stay Application*

2008 LSBC 34 Report issued : October 9 , 2008 Citation issued : April 12 , 2006 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and an application for a stay of proceedings concerning John Owen Richardson Applicant Decision Bencher : John J.L . Hunter... [Read full decision](#)

Bencher: John J.L. Hunter, QC

28.

Michael Curt Scholz | *Decision on Facts and Verdict*

2008 LSBC 02 Report issued : January 17 , 2008 Citation issued : August 9 , 2006 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Michael Curt Scholz Respondent Decision of the Hearing Panel on Facts and Verdict Hearing dates : ... [Read full decision](#)

G. Glen Ridgway, QC, Chair, Richard N. Stewart, Dirk J. Sigalet, QC

29.

Michael Curt Scholz | *Decision on Penalty*

2008 LSBC 16 Report issued : June 02 , 2008 Citation issued : August 9 , 2006 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Michael Curt Scholz Respondent Decision of the Hearing Panel on Penalty Hearing date : May 5 , 2008... [Read full decision](#)

G. Glen Ridgway, QC, Chair, Richard N. Stewart, Dirk J. Sigalet, QC

30.

Alan James Short | *Decision on Facts and Verdict*

2008 LSBC 20 Report issued : July 9 , 2008 Citation issued : November 7 , 2006 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Alan James Short Respondent Decision of the Hearing Panel on Facts and Verdict Hearing date : June... [Read full decision](#)

David Renwick, QC, Chair, Meg Shaw, QC, David Mossop, QC

31.

Donald Wayne Skogstad | *Decision on Facts and Verdict*

2008 LSBC 19 Report issued : July 3 , 2008 Citation issued : February 15 , 2005 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Donald Wayne Skogstad Respondent Decision of the Hearing Panel on Facts and Verdict Hearing dates... [Read full decision](#)

Panel: Robert W. McDiarmid, QC, Chair, Thelma O'Grady, Ralston S. Alexander, QC

32.

Rodney John Strandberg | *Decision on Penalty*

2008 LSBC 04 Report issued : January 28 , 2008 Citations issued : April 12 , 2006 and June 13 , 2006 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Rodney John Strandberg Respondent Decision of the Hearing Panel on Penalty He... [Read full decision](#)

Bruce A. LeRose, QC, Chair, Gerald Lecovin, QC, Gavin Hume, QC

33.

Khushpal Singh Taunk | *Decision of Hearing Panel*

2008 LSBC 37 Report issued : December 8 , 2008 Oral Reasons : November 27 , 2008 Citation issued : July 29 , 2008 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Khushpal Singh Taunk Respondent Decision of the Hearing Panel He... [Read full decision](#)

: G. Glen Ridgway, QC, Chair, Gavin Hume, QC, Bruce LeRose, QC

34.

Richard Neil Toews | *Decision of Hearing Panel*

2008 LSBC 29 Report issued : September 19 , 2008 Oral Reasons : August 28 , 2008 Citation issued : January 11 , 2008 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Richard Neil Toews Respondent Decision of the Hearing Panel H... [Read full decision](#)

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

35.

Jeffery-Emanuel Wittmann | *Decision of Hearing Panel*

2008 LSBC 24 Report issued : August 6 , 2008 Oral Reasons : July 30 , 2008 Citation issued :

February 22 , 2008 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Jeffery - Emanuel Wittmann Respondent Decision of the Hearing Pane... [Read full decision](#)

James D. Vilvang, QC, Chair, Joost Blom, QC, Leon Getz, QC

2007 Discipline Decisions

2007 LSBC Discipline Committee Composition Benchers:

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2. Rita Andreone (Vice-Chair),
3. Ken Dobell
4. Gavin Hume, QC,
5. Terence La Liberté, QC,
6. Jan Lindsay,
7. Dr. Maelor Vallance,
8. Jane Shackell, QC (Life Bencher)

Non- Benchers:

9. Dan Bennett,
10. Jo Ann Carmichael, QC,
11. Jennifer Duncan,
12. Peter Voith, QC

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2. Ken Dobell - [Sheldon Goldberg](#) - 2007 LSBC 55
3. Gavin Hume - [Marcus O Sullivan](#) - 2007 LSBC 08
4. Gavin Hume - [Marcus O Sullivan](#) - 2007 LSBC 44
5. Gavin Hume - [Rodney John Strandberg](#) - 2007 LSBC 19
6. Jan Lindsay - [Douglas Warren Welder](#) - 2007 LSBC 29

2007

1. James Vilvang, Q.C., Chair, Robert McDiarmid, Q.C., William Sullivan, Q.C
2. David M. Renwick, QC, Chair, Brian J. Wallace, QC, Robert D. Punnett
3. David M. Renwick, Q.C., Chair, Brian J. Wallace, Q.C., Robert D. Punnett
4. David M. Renwick, Q.C., Chair, Brian J. Wallace, Q.C., Robert D. Punnett
5. G. Glen Ridgway, Q.C., Chair, Ralston S. Alexander, Q.C., Robert C. Brun, Q.C.
6. Ralston S. Alexander, Q.C., Chair, Richard S. Margetts, Q.C., Robert C. Brun, Q.C.
7. David Zacks, Q.C., Chair, Gavin Hume, Q.C., Bruce LeRose, Q.C., Barbara Levesque, Thelma O'Grady, Dirk Sigalet, Q.C., Richard Stewart

8. Kathryn Berge, Q.C., Chair, Karl Warner, Q.C., Brian Wallace, Q.C.
9. Kathryn A. Berge, Q.C., Chair, Karl Warner, Q.C., Brian Wallace, Q.C.
10. William Jackson, Chair, Bruce LeRose, David Renwick
11. William Jackson, Chair, Bruce A. LeRose, Q.C., David M. Renwick, Q.C.
12. John J.L. Hunter, Q.C., Chair, David A. Zacks, Q.C., Ross D. Tunnicliffe
13. John J.L. Hunter, Q.C., Chair, David A. Zacks, Q.C., Ross D. Tunnicliffe
14. Gordon Turriff, Q.C., Chair, Gerald Lecovin, Q.C., Dirk Sigalet, Q.C.
15. Gordon Turriff, Q.C., Chair, Gerald Lecovin, Q.C., Dirk Sigalet, Q.C.
16. James Vilvang, Q.C., Chair, Richard Stewart, Robert Brun, Q.C.
17. James Vilvang, Q.C., Chair, Richard Stewart, Robert Brun, Q.C.
18. Joost Blom, Q.C., Chair, Kathryn Berge, Q.C., Robert D. Punnett
19. Bruce LeRose, Q.C., Chair, June Preston, Leon Getz, Q.C.
20. Gordon Turriff, Q.C., Chair, Joost Blom, Q.C., Robert McDiarmid, Q.C. 21. Gordon Turriff, Q.C., Chair, Joost Blom, Q.C., Robert McDiarmid, Q.C.
22. G. Glen Ridgway, Q.C., Chair, Leon Getz, Q.C., Gavin Hume, Q.C.
23. Leon Getz, Q.C. Gavin Hume Q.C. Dissent/minority decision: G. Glen Ridgway, Q.C., Chair,
24. Gordon Turriff, QC, Chair, James D. Vilvang, QC, Kathryn Berge, QC, Bruce A. LeRose, QC, Robert D. Punnett, Ken Dobell, Barbara Levesque
25. Gordon Turriff, QC, Chair, James D. Vilvang, QC, Kathryn Berge, QC, Bruce A. LeRose, QC, Robert D. Punnett, Ken Dobell, Barbara Levesque
26. G. Glen Ridgway, Q.C., Chair, William Jackson, Bruce A. LeRose, Q.C.
27. G. Glen Ridgway, Q.C., Chair, William Jackson, Bruce A. LeRose, Q.C.
28. G. Glen Ridgway, Q.C., Chair, William Jackson, Bruce A. LeRose, Q.C.
29. G. Glen Ridgway, Q.C., Chair, William Jackson, Bruce A. LeRose, Q.C.
30. Dirk J. Sigalet, Q.C., Chair, Leon Getz, Q.C., Ross Tunnicliffe
31. Dirk J. Sigalet, Q.C., Chair, Leon Getz, Q.C., Ross Tunnicliffe
32. Anna Fung, Q.C., Chair, Ralston S. Alexander, Q.C., William Everett, Q.C. 33. Anna Fung, Q.C., Chair, James Vilvang, Q.C., Thelma O'Grady
34. Gordon Turriff, Q.C., Chair, Carol Hickman, Leon Getz, Q.C.
35. John J.L. Hunter, Q.C., Chair, Gordon Turriff, Q.C., Thelma O'Grady 36. James Vilvang, Q.C., Chair, Richard Stewart, Robert Brun, Q.C.
37. James Vilvang, Q.C., Chair, Richard Stewart, Robert Brun, Q.C.
38. Gordon Turriff, Q.C., Chair, David Renwick, Q.C., Warren Wilson, Q.C.
39. James Vilvang, Q.C., Chair, June Preston, David Renwick, Q.C.
40. James D. Vilvang, Q.C., Chair, June Preston, David Renwick, Q.C.
41. Leon Getz, Q.C., Single Bencher Panel
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44. Gavin Hume, Q.C., Chair, David Renwick, Dirk Sigalet, Q.C.
45. Gavin Hume, Q.C., Chair, David Renwick, Q.C., Dirk Sigalet, Q.C.
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47. Glen Ridgway, Q.C., Chair, Leon Getz, Q.C., Ronald S. Tindale 48. James D. Vilvang, Q.C., Chair, Leon Getz, Q.C., Art Vertlieb, Q.C.
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51. David A. Zacks, Q.C., Chair, Thelma J. O'Grady, David M. Renwick, Q.C.
52. Bruce LeRose, Q.C., Chair, Gerald Lecovin, Q.C., Gavin Hume, Q.C.
53. James Vilvang, Q.C., Chair, Terence La Liberte, Q.C., Jan Lindsay, Ken Dobell, Joost Blom, Q.C., Ronald Tindale, Kathryn Berge, Q.C., Dirk Sigalet, Q.C., Leon Getz, Q.C.

1.

Daniel Glen Addison | *Decision of the Hearing Panel*

2007 LSBC 12 Report issued : March 02 , 2007 Oral Reasons : February 21 , 2007 Citation issued : June 19 , 2006 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Daniel Glen Addison Respondent Decision of the Hearing Panel Heari... [Read full decision](#)

Panel: James Vilvang, Q.C., Chair, Robert McDiarmid, Q.C., William Sullivan, Q.C

2.

Sabrina Ann Sheherazade Ali | *Decision on Penalty*

2007 LSBC 57 Report issued : December 20 , 2007 Citation issued : January 9 , 2006 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Sabrina Ali Respondent Decision of the Hearing Panel on Penalty Hearing date : November 30 , 20... [Read full decision](#)

Panel: David M. Renwick, QC, Chair, Brian J. Wallace, QC, Robert D. Punnett

3.

Sabrina Ann Sheherazade Ali | *Decision on Facts and Verdict*

2007 LSBC 18 Report issued : April 11 , 2007 Citation issued : January 9 , 2006 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Sabrina Ali Respondent Decision of the Hearing Panel on Facts and Verdict Hearing date : February... [Read full decision](#)

Panel: David M. Renwick, Q.C., Chair, Brian J. Wallace, Q.C., Robert D. Punnett

4.

Sabrina Ann Sheherazade Ali | *Corrigendum*

2007 LSBC 33 Corrigendum issued : June 14 , 2007 Report issued : April 11 , 2007 Citation issued : January 9 , 2006 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Sabrina Ali Respondent CORRIGENDUM Panel : David M . Renwick ,... [Read full decision](#)

Panel: David M. Renwick, Q.C., Chair, Brian J. Wallace, Q.C., Robert D. Punnett 5.

Raymond William Barton | *Decision on Facts and Verdict*

2007 LSBC 24 Report issued : April 27 , 2007 Citation issued : March 8 , 2006 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Raymond Barton Respondent Decision of the Hearing Panel on Facts and Verdict Hearing date : Septembe... [Read full decision](#)

G. Glen Ridgway, Q.C., Chair, Ralston S. Alexander, Q.C., Robert C. Brun, Q.C.

6.

[Raghbir Singh Basi](#) | *Decision on Penalty*

2007 LSBC 25 Report issued : May 17 , 2007 Citations issued : June 29 , 2005 , November 22 , 2005 and December 20 , 2005 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Raghbir Singh Basi Respondent Decision of the Hearing Pan... [Read full decision](#)

Ralston S. Alexander, Q.C., Chair, Richard S. Margetts, Q.C., Robert C. Brun, Q.C.

7.

[Howard Raymond Berge](#) | *Decision of Benchers on Review*

2007 LSBC 07 Report issued : January 17 , 2007 Citation issued : June 30 , 2004 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a section 47 Review concerning Howard Raymond Berge , Q.C . Applicant Decision of the Benchers on Review Review date :... [Read full decision](#)

David Zacks, Q.C., Chair, Gavin Hume, Q.C., Bruce LeRose, Q.C., Barbara Levesque, Thelma O'Grady, Dirk Sigalet, Q.C., Richard Stewart 8.

[Pamela Suzanne Boles](#) | *Decision on Facts and Verdict*

2007 LSBC 27 Report issued : May 29 , 2007 Citation issued : August 24 , 2005 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Pamela Suzanne Boles Respondent Decision of the Hearing Panel on Facts and Verdict Hearing date : No... [Read full decision](#)

Panel: Kathryn Berge, Q.C., Chair, Karl Warner, Q.C., Brian Wallace, Q.C.

9.

[Pamela Suzanne Boles](#) | *Decision on Penalty*

2007 LSBC 43 Report issued : October 01 , 2007 Citation issued : August 24 , 2005 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Pamela Suzanne Boles Respondent Decision of the Hearing Panel on Penalty Hearing date : August 2... [Read full decision](#)

Kathryn A. Berge, Q.C., Chair, Karl Warner, Q.C., Brian Wallace, Q.C.

10.

[Mennes Hughie G Braker](#) | *Decision on Facts and Verdict*

2007 LSBC 01 Report issued : January 04 , 2007 Citation issued : October 16 , 2006 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Hugh Braker , Q.C . Respondent Decision of the Hearing Panel on Facts and Verdict Hearing date... [Read full decision](#)

William Jackson, Chair, Bruce LeRose, David Renwick

11.

Hugh G Braker | *Decision on Penalty*

2007 LSBC 42 Report issued : September 19 , 2007 Citation issued : October 16 , 2006 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Hugh Braker , Q.C . Respondent Decision of the Hearing Panel on Penalty Hearing date : July 6... [Read full decision](#)
William Jackson, Chair, Bruce A. LeRose, Q.C., David M. Renwick, Q.C.

12.

Douglas Hewson Christie | *Decision on Facts and Verdict*

2007 LSBC 41 Report issued : September 11 , 2007 Citation issued : June 19 , 2006 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Douglas Hewson Christie Respondent Decision of the Hearing Panel on Facts and Verdict Hearing da... [Read full decision](#)
Panel: John J.L. Hunter, Q.C., Chair, David A. Zacks, Q.C., Ross D. Tunnicliffe

13.

Stuart Thomas Clendening | *Decision of the Hearing Panel*

2007 LSBC 10 Report issued : February 09 , 2007 Oral Reasons : January 16 , 2007 Citation issued : May 23 , 2006 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Stuart Clendening Respondent Decision of the Hearing Panel Hearin... [Read full decision](#)
John J.L. Hunter, Q.C., Chair, David A. Zacks, Q.C., Ross D. Tunnicliffe

14.

Heather Catherine Cunningham | *Decision on Facts and Verdict*

2007 LSBC 17 Report issued : April 10 , 2007 Oral Reasons : January 11 , 2007 Citation issued : August 30 , 2006 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Heather Catherine Cunningham Respondent Decision of the Hearing P... [Summary](#) | [Read full decision](#)
Gordon Turriff, Q.C., Chair, Gerald Lecovin, Q.C., Dirk Sigalet, Q.C.

15.

Heather Catherine Cunningham | *Decision on Penalty*

2007 LSBC 47 Report issued : October 31 , 2007 Citation issued : August 30 , 2006 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Heather Catherine Cunningham Respondent Decision of the Hearing Panel on Penalty Hearing date :... [Summary](#) | [Read full decision](#)
Gordon Turriff, Q.C., Chair, Gerald Lecovin, Q.C., Dirk Sigalet, Q.C.

16.

Shane Sidney Dennison | *Decision on Facts and Verdict*

2007 LSBC 23 Report issued : April 23 , 2007 Citation issued : December 21 , 2004 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a

hearing concerning Shane Sidney Dennison Respondent Decision of the Hearing Panel on Facts and Verdict Hearing date... [Read full decision](#)
James Vilvang, Q.C., Chair, Richard Stewart, Robert Brun, Q.C.

17.

[Shane Sidney Dennison](#) | *Decision on Penalty*

2007 LSBC 51 Report issued : November 22 , 2007 Oral Reasons : November 1 , 2007 Citation issued : December 21 , 2004 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Shane Sidney Dennison Respondent Decision of the Hearing Pan... [Read full decision](#)
James Vilvang, Q.C., Chair, Richard Stewart, Robert Brun, Q.C

18.

[John Wilson Dobbin](#) | *Decision on Penalty*

2007 LSBC 09 Report issued : February 05 , 2007 Oral Reasons : Citation issued : The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning John Wilson Dobbin Respondent Decision of the Hearing Panel on Penalty Hearing date : November 8... [Read full decision](#)
Joost Blom, Q.C., Chair, Kathryn Berge, Q.C., Robert D. Punnett

19.

[Crawford Grant Edwards](#) | *Decision on Penalty*

2007 LSBC 04 Report issued : January 12 , 2007 Citation issued : November 22 , 2005 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Crawford Grant Edwards Respondent Decision of the Hearing Panel on Penalty Hearing date : Sept... [Read full decision](#)
Bruce LeRose, Q.C., Chair, June Preston, Leon Getz, Q.C

20.

[Crawford Grant Edwards](#) | *Corrigenda*

2007 LSBC 05 Corrigenda issued : January 15 , 2007 Report issued : January 12 , 2007 Citation issued : November 22 , 2005 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Crawford Grant Edwards Respondent Corrigenda Panel : Bru... [Read full decision](#)

21.

[Michael Zsolt Galambos](#) | *Decision of the Hearing Panel*

2007 LSBC 31 Report issued : June 11 , 2007 Oral Reasons : April 18 , 2007 Citation issued : February 19 , 2007 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Michael Zsolt Galambos Respondent Decision of the Hearing Panel He... [Read full decision](#)

Gordon Turriff, Q.C., Chair, Joost Blom, Q.C., Robert McDiarmid, Q.C.

22.

Larry William Goddard | *Decision on Facts and Verdict*

2007 LSBC 46 Report issued : October 25 , 2007 Citation issued : May 3 , 2007 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Larry William Goddard Respondent Decision of the Hearing Panel on Facts and Verdict Hearing date : S... [Read full decision](#)

Gordon Turriff, Q.C., Chair, Joost Blom, Q.C., Robert McDiarmid, Q.C 23.

Sheldon Goldberg | *Decision on Facts and Verdict*

2007 LSBC 03 Report issued : January 10 , 2007 Citation issued : March 7 , 2006 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Sheldon Goldberg Respondent Decision of the Hearing Panel on Facts and Verdict Hearing dates : Apr... [Read full decision](#)

G. Glen Ridgway, Q.C., Chair, Leon Getz, Q.C., Gavin Hume, Q.C.

24.

Sheldon Goldberg | *Decision on Penalty*

2007 LSBC 40 Report issued : September 7 , 2007 Citation issued : March 7 , 2006 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Sheldon Goldberg Respondent Decision of the Hearing Panel on Penalty Hearing date : May 18 , 2007... [Read full decision](#)

Panel: Majority decision: Leon Getz, Q.C., Gavin Hume, Q.C. Dissent/minority decision: G. Glen Ridgway, Q.C., Chair, 25.

Sheldon Goldberg | *Decision on Stay Application*

2007 LSBC 53 Report issued : November 27 , 2007 Citation issued : March 7 , 2006 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and an application for a stay of proceedings concerning Sheldon Goldberg Applicant Decision Application date : October 18... [Read full decision](#)

Benchers: Gordon Turriff, QC, Chair, James D. Vilvang, QC, Kathryn Berge, QC, Bruce A. LeRose, QC, Robert D. Punnett, Ken Dobell, Barbara Levesque

26.

Sheldon Goldberg | *Decision on Review*

2007 LSBC 55 Report issued : December 17 , 2007 Citation issued : May 19 , 2004 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a section 47 review concerning Sheldon Goldberg Applicant Decision of the Benchers on Review Review date : October 25 ,... [Read full decision](#)

Benchers: Gordon Turriff, QC, Chair, James D. Vilvang, QC, Kathryn Berge, QC, Bruce A. LeRose, QC, Robert D. Punnett, Ken Dobell, Barbara Levesque

27.

Vance King Goulding | *Decision on Facts and Verdict*

2007 LSBC 16 Report issued : April 4 , 2007 Citation issued : June 28 , 2006 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing

concerning Vance Goulding Respondent Decision of the Hearing Panel on Facts and Verdict
Hearing date : March 14... [Read full decision](#) | *Trust Protection Coverage Payment*

Panel: G. Glen Ridgway, Q.C., Chair, William Jackson, Bruce A. LeRose, Q.C 28.

[Vance King Goulding](#) | *Corrigendum*

2007 LSBC 21 Corrigendum issued : April 19 , 2007 Citation issued : June 28 , 2006 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Vance Goulding Respondent Corrigendum Panel : G . Glen Ridgway , Q.C . , Chair , William Jackso... [Read full decision](#)

Panel: G. Glen Ridgway, Q.C., Chair, William Jackson, Bruce A. LeRose, Q.C

29.

[Vance King Goulding](#) | *Decision on Penalty*

2007 LSBC 39 Report issued : August 31 , 2007 Citation issued : June 28 , 2006 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Vance King Goulding Respondent Decision of the Hearing Panel on Penalty Hearing date : July 26 , 20... [Read full decision](#)

Panel: G. Glen Ridgway, Q.C., Chair, William Jackson, Bruce A. LeRose, Q.C.

30.

[Tera Nicole Hainer](#) | *Decision on Facts and Verdict*

2007 LSBC 14 Report issued : March 27 , 2007 Oral Reasons : February 6 , 2007 Citation issued : July 4 , 2006 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Nicole Hainer Respondent Decision of the Hearing Panel on Facts and... [Read full decision](#)

Panel: Dirk J. Sigalet, Q.C., Chair, Leon Getz, Q.C., Ross Tunnicliffe

31.

[Tera Nicole Hainer](#) | *Decision on Penalty*

2007 LSBC 48 Report issued : October 31 , 2007 Citation issued : July 4 , 2006 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Nicole Hainer Respondent Decision of the Hearing Panel on Penalty Hearing date : September 12 , 200... [Read full decision](#)

Panel: Dirk J. Sigalet, Q.C., Chair, Leon Getz, Q.C., Ross Tunnicliffe

32.

[James Douglas Hall](#) | *Decision on Penalty*

2007 LSBC 26 Report issued : May 28 , 2007 Citation issued : December 1 , 2005 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning James Douglas Hall Respondent Decision of the Hearing Panel on Penalty Hearing date : July 28 , 200... [Read full decision](#)

Panel: Anna Fung, Q.C., Chair, Ralston S. Alexander, Q.C., William Everett, Q.C.

33.

David Donald Hart | *Decision of the Hearing Panel*

2007 LSBC 50 Report issued : November 21 , 2007 Oral Reasons : November 1 , 2007 Citation issued : May 16 , 2007 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning David Donald Hart Respondent Decision of the Hearing Panel Hearin... [Read full decision](#)

Panel: Anna Fung, Q.C., Chair, James Vilvang, Q.C., Thelma O'Grady

34.

Leonard Thomas Denovan Hill | *Decision of the Hearing Panel*

2007 LSBC 02 Report issued : January 10 , 2007 Oral Reasons : December 19 , 2006 Citation issued : December 1 , 2005 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Leonard Thomas Denovan Hill Respondent Decision of the Hearin... [Read full decision](#)

Panel: Gordon Turriff, Q.C., Chair, Carol Hickman, Leon Getz, Q.C.

35.

Brian Peter Grant Kaminski | *Decision of Hearing Panel*

2007 LSBC 37 Report issued : July 18 , 2007 Oral Reasons : February 9 , 2007 Citation issued : December 20 , 2006 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Brian Kaminski Respondent Decision of the Hearing Panel Hearing... [Read full decision](#)

Panel: John J.L. Hunter, Q.C., Chair, Gordon Turriff, Q.C., Thelma O'Grady 36.

Donald Craig King | *Decision on Facts and Verdict*

2007 LSBC 22 Report issued : April 23 , 2007 Citation issued : July 28 , 2006 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Donald Craig King Respondent Decision of the Hearing Panel on Facts and Verdict Hearing date : Janua... [Read full decision](#)

Panel: James Vilvang, Q.C., Chair, Richard Stewart, Robert Brun, Q.C.

37.

Donald Craig King | *Decision on Penalty*

2007 LSBC 52 Report issued : November 22 , 2007 Oral Reasons : November 1 , 2007 Citation issued : July 28 , 2006 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Donald Craig King Respondent Decision of the Hearing Panel on Pe... [Read full decision](#)

Panel: James Vilvang, Q.C., Chair, Richard Stewart, Robert Brun, Q.C 38.

Re: Lawyer 11 | *Decision on Charter Application*

2007 LSBC 49 Report issued : November 5 , 2007 Citation issued : January 16 , 2006 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Re : Lawyer 11 Decision of the Hearing Panel on Respondent's Charter Application Hearing dates... [Read full decision](#)

Panel: Gordon Turriff, Q.C., Chair, David Renwick, Q.C., Warren Wilson, Q.C.

39.

John Keith Lowes | *Decision on Facts and Verdict*

2007 LSBC 28 Report issued : May 29 , 2007 Oral Reasons : February 27 , 2007 Citation issued : November 29 , 2006 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning John Keith Lowes Respondent Decision of the Hearing Panel on Fac... [Read full decision](#)

Panel: James Vilvang, Q.C., Chair, June Preston, David Renwick, Q.C.

40.

John Keith Lowes | *Decision on Penalty*

2007 LSBC 54 Report issued : December 06 , 2007 Oral Reasons : November 15 , 2007 Citation issued : November 29 , 2006 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning John Keith Lowes Respondent Decision of the Hearing Panel o... [Read full decision](#)

Panel: James D. Vilvang, Q.C., Chair, June Preston, David Renwick, Q.C.

41.

Mimi Mankiu Luk | *Decision of Hearing Panel*

2007 LSBC 13 Report issued : March 09 , 2007 Oral Reasons : January 8 , 2007 Citation issued : December 2 , 2005 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Mimi Mankiu Luk Respondent Decision of the Hearing Panel Hearing... [Read full decision](#)

Panel: Leon Getz, Q.C., Single Benchers Panel

42.

David John Charles Martin | *Decision of the Benchers on Review*

2007 LSBC 20 Report issued : April 11 , 2007 Citation issued : September 9 , 2004 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a section 47 review concerning David John Martin Applicant Decision of the Benchers on Review Review date : October 1... [Read full decision](#)

Quorum: James D. Vilvang, Q.C., Chair, Dirk J. Sigalet, Q.C., Leon Getz, Q.C., Robert D. Punnett, Thelma O'Grady, Richard N. Stewart, Ronald S. Tindale 43.

Richard Craig Nielsen | *Decision of Hearing Panel*

2007 LSBC 35 Report issued : June 29 , 2007 Oral Reasons : May 15 , 2007 Citation issued : June 30 , 2006 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Richard Nielsen Respondent Decision of the Hearing Panel Hearing date :... [Read full decision](#)

Panel: Joost Blom, Q.C., Chair, Thelma O'Grady, Kathryn Berge, Q.C.

44.

Marcus O Sullivan | *Decision on Facts and Verdict*

2007 LSBC 08 Report issued : January 24 , 2007 Citation issued : April 5 , 2006 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Marcus O'Sullivan Respondent Decision of the Hearing Panel on Facts and Verdict Hearing date : Dec... [Read full decision](#)

Panel: Gavin Hume, Q.C., Chair, David Renwick, Dirk Sigalet, Q.C.

45.

Marcus O Sullivan | *Decision on Penalty*

2007 LSBC 44 Report issued : October 04 , 2007 Citation issued : April 5 , 2006 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Marcus O'Sullivan Respondent Decision of the Hearing Panel on Penalty Hearing date : August 28 , 2... [Read full decision](#)

Panel: Gavin Hume, Q.C., Chair, David Renwick, Q.C., Dirk Sigalet, Q.C. 46.

Jonathan Lewis Oldroyd | *Decision on Facts and Verdict*

2007 LSBC 06 Report issued : January 17 , 2007 Citation issued : October 5 , 2005 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Jonathan Lewis Oldroyd Respondent Decision of the Hearing Panel on Facts and Verdict Hearing date... [Read full decision](#)

Panel: G. Glen Ridgway, Q.C., Chair, Leon Getz, Q.C., Ronald Tindale

47.

Jonathan Lewis Oldroyd | *Decision on Penalty*

2007 LSBC 36 Report issued : July 16 , 2007 Citation issued : October 5 , 2005 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Jonathan Lewis Oldroyd Respondent Decision of the Hearing Panel on Penalty Hearing date : May 30 , ... [Read full decision](#)

Panel: G. Glen Ridgway, Q.C., Chair, Leon Getz, Q.C., Ronald S. Tindale

48.

Roger Roy Plested | *Decision of the Hearing Panel*

2007 LSBC 45 Report issued : October 11 , 2007 Oral Reasons : September 28 , 2007 Citation issued : June 13 , 2007 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Roger Roy Plested Respondent Decision of the Hearing Panel Hear... [Read full decision](#)

Panel: James D. Vilvang, Q.C., Chair, Leon Getz, Q.C., Art Vertlieb, Q.C.

49.

Michael Murph Ranspot | *Decision on Penalty*

2007 LSBC 56 Report issued : December 18 , 2007 Citation issued : June 29 , 2006 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Michael Murph Ranspot Respondent Decision of the Hearing Panel on Penalty Hearing date : November... [Read full decision](#)

Panel: David Renwick, QC, Chair, Thelma O'Grady, Robert C. Brun, QC 50.

Michael Murph Ranspot | *Decision on Facts and Verdict*

2007 LSBC 32 Report issued : June 12 , 2007 Oral Reasons : March 6 , 2007 Citation issued : June 29 , 2006 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Michael Murph Ranspot Respondent Decision of the Hearing Panel on Facts... [Read full decision](#)

Panel: David Renwick, Q.C., Chair, Thelma O'Grady, Robert Brun, Q.C

51.

John Owen Richardson | *Decision on Facts and Verdict*

2007 LSBC 11 Report issued : March 2 , 2007 Citation issued : April 12 , 2006 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning John Owen Richardson Respondent Decision of the Hearing Panel on Facts and Verdict Hearing date : Ja... [Read full decision](#)

Panel: David A. Zacks, Q.C., Chair, Thelma J. O'Grady, David M. Renwick, Q.C.

52.

Rodney John Strandberg | *Decision on Facts and Verdict*

2007 LSBC 19 Report issued : April 11 , 2007 Citations issued : April 12 , 2006 and June 13 , 2006 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Rodney John Strandberg Respondent Decision of the Hearing Panel on Facts and Ve... [Read full decision](#)

Panel: Bruce LeRose, Q.C., Chair, Gerald Lecovin, Q.C., Gavin Hume, Q.C.

53.

Douglas Warren Welder | *Decision of Benchers on Review*

2007 LSBC 29 Report issued : June 8 , 2007 Citation issued : February 9 , 2005 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a section 47 review concerning Douglas Warren Welder APPLICANT Decision of the Benchers on Review Review date : January... [Read full decision](#)

Quorum: Majority decision: James Vilvang, Q.C., Chair, Terence La Liberte, Q.C., Jan Lindsay, Ken Dobell, Joost Blom, Q.C., Ronald Tindale, Kathryn Berge, Q.C., Dirk Sigalet, Q.C., Leon Getz, Q.C.

2006 – LSBC Discipline Decisions

2006 LSBC Discipline Committee Composition

Benchers:

1. Anna Fung, QC (Chair),
2. Ian Donaldson, QC (Vice-chair),
3. Rita Andreone,
4. Ken Dobell,
5. Terence La Liberté, QC,
6. Jan Lindsay,
7. June Preston,
8. Arthur Vertlieb, QC,
9. Jane Shackell, QC (Life Bencher)

Non-Benchers:

10. Dan Bennett,
11. Jo Ann Carmichael, QC,
12. Peter Voith, QC

Conflicts of Interest -2006 (2)

1. Ken Dobell - [Danine Lorraine Geronazzo](#) - 2006 LSBC 50
2. June Preston - [Crawford Grant Edwards](#) - 2006 LSBC 27

2006

1. G. Glen Ridgway, QC, Chair, Gordon Turriff, QC, Ross D. Tunnicliffe
2. G. Glen Ridgway, Q.C., Chair, James D. Vilvang, Q.C., David A. Zacks, Q.C., Michael Falkins, Patrick Kelly, Gavin Hume, Q.C., Bruce LeRose, Dirk Sigalet, Q.C., Leon Getz, Q.C., Thelma O'Grady, Kathryn Berge, Q.C., Richard N. Stewart, David M. Renwick, Ronald S. Tindale, Robert D. Punnett
3. G. Glen Ridgway, Q.C., Chair, Gordon Turriff, Q.C., Robert Brun, Q.C.
4. G. Glen Ridgway, Q.C., Gordon Turriff, Q.C., Robert Brun, Q.C.
5. William Jackson
6. Richard S. Margetts, Q.C., Chair, Russell S. Tretiak, Q.C., Peter J. Keighley, Q.C.
7. G. Glen Ridgway, Q.C., Kathryn Berge, Q.C. Concurring Decision: Gordon Turriff, Q.C. 8. Joost Blom, Q.C., Chair, Kathryn A. Berge, Q.C., Robert D. Punnett
9. Bruce A. LeRose, June Preston, Leon Getz, Q.C.
10. Ralston S. Alexander, Q.C., Chair, Dirk Sigalet, Q.C., G. Glen Ridgway, Q.C.
11. Ralston S. Alexander, Q.C., Chair, Dirk Sigalet, Q.C., G. Glen Ridgway, Q.C.
12. Gordon Turriff, QC, Single Bencher Panel
13. Ralston S. Alexander, Q.C., Chair, G. Glen Ridgway, Q.C., William J. Sullivan, Q.C

14. Gordon Turriff, Q.C., Chair, Ronald Tindale, Robert Punnett, Michael Falkins, Thelma O'Grady, David Renwick, Ken Dobell
15. Anne Wallace, Q.C., Single Bench Panel
16. James D. Vilvang, QC, Chair, Thelma O'Grady, Leon Getz, QC
17. Anna Fung, Q.C., Chair, Ralston S. Alexander, Q.C., William M. Everett, Q.C.
18. G. Ronald Toews, QC, Chair, Patricia L. Schmit, QC, G. Glen Ridgway, QC
19. Ralston S. Alexander, Q.C., Chair, G. Ronald Toews, Q.C., Ross Tunnicliffe
20. Leon Getz, Q.C., Chair, Kathryn A. Berge, Q.C., Michael Falkins
21. Robert W. McDiarmid, Q.C., Single Bench Panel
22. Patricia Schmit, Q.C., Chair, William Sullivan, Q.C., Gavin Hume, Q.C. 23. Ross Tunnicliffe, Chair, Patricia L. Schmit, Q.C., Bruce A. LeRose
24. Gavin Hume, Q.C.
25. Joost Blom, Q.C., Chair, William M. Trotter, Q.C., Donald A. Silversides, Q.C.
26. Leon Getz, Q.C., Chair, William Sullivan, Q.C., Gerald Kambeitz, Q.C.
27. James D. Vilvang, Q.C., Single Bench Panel
28. Bruce LeRose, Chair, Patricia Schmit, Q.C., Ross Tunnicliffe
29. Bruce LeRose, Chair, Patricia Schmit, Q.C., Ross Tunnicliffe
30. Dirk Sigalet, QC
31. Gordon Turriff, QC, Chair, Ralston S. Alexander, QC, Richard Stewart
32. Gordon Turriff, QC, Chair, Richard Stewart, QC, Ralston Alexander, QC
33. : G. Glen Ridgway, QC, Chair, William Jackson, Dirk Sigalet, QC
34. Robert W. McDiarmid, QC, Chair, Thelma O'Grady, Ralston S. Alexander, QC 35. Robert W. McDiarmid, QC, Chair, Thelma O'Grady, Ralston S. Alexander, QC
36. Robert W. McDiarmid, QC, Chair, Thelma O'Grady, Ralston S. Alexander, QC
37. Leon Getz, Q.C., Chair, Kathryn Berge, Q.C., Michael Falkins
38. Gavin Hume, Q.C., Chair, Thelma O'Grady, Dirk Sigalet, Q.C.
39. Ralston S. Alexander, Q.C., Chair, Anne K. Wallace, Q.C., Dirk Sigalet, Q.C.
40. Gordon Turriff, Q.C., Chair, Bruce LeRose, Gavin Hume, Q.C.

Raghubir Singh Basi | *Decision on Costs*

2006 LSBC 03 Report issued : January 12 , 2006 Citations issued : May 26 , 2003 , June 22 , 2004 , July 6 , 2004 and November 16 , 2004 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Raghubir Singh Basi Respondent Decision of... [Read full decision](#)

Panel: G. Glen Ridgway, QC, Chair, Gordon Turriff, QC, Ross D. Tunnicliffe
2.

Howard Raymond Berge | *Decision of the Benchers*

2006 LSBC 19 Report issued : May 10 , 2006 Citation issued : July 30 , 2004 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and an application concerning Howard Raymond Berge , Q.C . Respondent Decision of the Benchers Written Submissions : March 28 , ... [Read full decision](#)

Benchers: G. Glen Ridgway, Q.C., Chair, James D. Vilvang, Q.C., David A. Zacks, Q.C., Michael Falkins, Patrick Kelly, Gavin Hume, Q.C., Bruce LeRose, Dirk Sigalet, Q.C., Leon Getz, Q.C., Thelma O'Grady, Kathryn Berge, Q.C., Richard N. Stewart, David M. Renwick, Ronald S. Tindale, Robert D. Punnett

3.

[Mennes Hughie G Braker](#) | *Decision on Facts and verdict*

2006 LSBC 02 Report issued : January 12 , 2006 Citations issued : September 28 , 2005 , December 2 , 2005 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Hugh Braker , Q.C . Respondent Decision of the Hearing Panel on Facts an... [Read full decision](#)

Panel: G. Glen Ridgway, Q.C., Chair, Gordon Turriff, Q.C., Robert Brun, Q.C.

4.

[Mennes Hughie G Braker](#) | *Decision on Penalty*

2006 LSBC 07 Report issued : February 27 , 2006 Citations issued : September 28 , 2005 and December 2 , 2005 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Hugh Braker , Q.C . Respondent Decision of the Hearing Panel on Penal... [Read full decision](#)

Panel: G. Glen Ridgway, Q.C., Gordon Turriff, Q.C., Robert Brun, Q.C.

5.

[Douglas Hewson Christie](#) | *Decision of a Benchner*

2006 LSBC 38 Report issued : October 17 , 2006 Citation issued : June 19 , 2006 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and an application pursuant to Rule 4 - 26 concerning Douglas Hewson Christie Respondent Decision of a Benchner Benchner : Wi... [Read full decision](#)

Benchner: William Jackson

6.

[Richard Luke Coglon](#) | *Decision on Penalty*

2006 LSBC 14 Report issued : April 25 , 2006 Citation issued : December 17 , 1999 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Richard Luke Coglon Respondent Decision of the Hearing Panel on Penalty Hearing date : November... [Read full decision](#)

Panel: Richard S. Margetts, Q.C., Chair, Russell S. Tretiak, Q.C., Peter J. Keighley, Q.C.

7.

[Gregory Charles Cranston](#) | *Decision of Hearing Panel*

2006 LSBC 36 Report issued : October 12 , 2006 Citation issued : March 6 , 2006 The Law

Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Gregory Charles Cranston Respondent Decision of the Hearing Panel
Hearing date : July 21 , 2006 Pa... [Read full decision](#)
Panel: G. Glen Ridgway, Q.C., Kathryn Berge, Q.C. Concurring Decision: Gordon Turriff, Q.C

8.

[John Wilson Dobbin](#) | *Decision on Facts and Verdict*

2006 LSBC 28 Report issued : June 29 , 2006 Citation issued : January 6 , 2006 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning John Wilson Dobbin Respondent Decision of the Hearing Panel on Facts and Verdict
Hearing dates : Ap... [Read full decision](#)

Panel: Joost Blom, Q.C., Chair, Kathryn A. Berge, Q.C., Robert D. Punnett 9.

[Crawford Grant Edwards](#) | *Decision on Facts and Verdict*

2006 LSBC 27 Report issued : June 28 , 2006 Citation issued : November 22 , 2005 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Crawford Grant Edwards Respondent Decision of the Hearing Panel on Facts and Verdict Hearing date... [Read full decision](#) Panel: Bruce A. LeRose, June Preston, Leon Getz, Q.C.

10.

[Elmer Vernon Epp](#) | *Decision on Facts and verdict*

2006 LSBC 05 Report issued : January 24 , 2006 Citation issued : August 24 , 2005 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Elmer Vernon Epp Respondent Decision of the Hearing Panel on Facts and Verdict Hearing date : No... [Read full decision](#)

Panel: Ralston S. Alexander, Q.C., Chair, Dirk Sigalet, Q.C., G. Glen Ridgway, Q.C.

11.

[Elmer Vernon Epp](#) | *Decision on Penalty*

2006 LSBC 21 Report issued : May 25 , 2006 Citation issued : August 24 , 2005 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Elmer Vernon Epp Respondent Decision of the Hearing Panel Hearing date : May 15 , 2006 Panel : Ralst... [Read full decision](#)

Panel: Ralston S. Alexander, Q.C., Chair, Dirk Sigalet, Q.C., G. Glen Ridgway, Q.C.

12.

[Daniel Bruce Geller](#) | *Corrigendum*

2006 LSBC 04 Report issued : July 13 , 2004 Corrigendum issued : January 16 , 2006 Citation issued : April 3 , 2003 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Daniel Bruce Geller Respondent Corrigendum of the Hearing Pane... [Read full decision](#)

Panel: Gordon Turriff, QC, Single Bench Panel

13.

Danine Lorraine Geronazzo | *Decision on Penalty*

2006 LSBC 37 Report issued : October 13 , 2006 Citation issued : February 1 , 2005 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Danine Lorraine Geronazzo Respondent Decision of the Hearing Panel on Penalty Hearing date : Ju... [Read full decision](#)

Panel: Ralston S. Alexander, Q.C., Chair, G. Glen Ridgway, Q.C., William J. Sullivan, Q.C

14.

Danine Lorraine Geronazzo | *Decision of the Benchers on Review*

2006 LSBC 50 Report issued : December 13 , 2006 Citation issued : July 9 , 2002 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a section 47 Review concerning Danine Lorraine Geronazzo Respondent Decision of the Benchers on Review Review date : Ju... [Read full decision](#)

Benchers: Gordon Turriff, Q.C., Chair, Ronald Tindale, Robert Punnett, Michael Falkins, Thelma O'Grady, David Renwick, Ken Dobell

15.

Larry William Goddard | *Decision on Penalty*

2006 LSBC 12 Report issued : April 19 , 2006 Oral Reasons : March 29 , 2006 Citation issued : April 22 , 2004 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Larry William Goddard Respondent Decision of the Hearing Panel on Pe... [Read full decision](#)

Panel: Anne Wallace, Q.C., Single Benchers Panel

16.

Vance King Goulding | *Decision of Three Benchers*

2006 LSBC 16 Report issued : April 28 , 2006 Oral Reasons : April 25 , 2006 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a s . 39 proceeding concerning Vance King Goulding Respondent Decision of Three Benchers Hearing date : April 25 , 2006 Pan... [Read full decision](#)

Panel: James D. Vilvang, QC, Chair, Thelma O'Grady, Leon Getz, QC 17.

James Douglas Hall | *Decision on Facts and verdict*

2006 LSBC 10 Report issued : March 15 , 2006 Oral Reasons : March 8 , 2006 Citation issued : December 1 , 2005 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning James Douglas Hall Respondent Decision of the Hearing Panel on Fact... [Read full decision](#)

Panel: Anna Fung, Q.C., Chair, Ralston S. Alexander, Q.C., William M. Everett, Q.C.

18.

James Douglas Hall | *Decision on Costs*

2006 LSBC 23 Report issued : June 12 , 2006 Citation issued : June 19 , 2003 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing

concerning James Douglas Hall Respondent Decision of the Hearing Panel on Costs Written submissions received from... [Read full decision](#)

Panel: G. Ronald Toews, QC, Chair, Patricia L. Schmit, QC, G. Glen Ridgway, QC

19.

[Dale Bruce Harder](#) | *Decision on Penalty*

2006 LSBC 48 Report issued : December 7 , 2006 Citation issued : March 26 , 2003 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Dale Bruce Harder Respondent Decision of the Hearing Panel on Penalty Hearing date : July 13 , 20... [Read full decision](#)

Panel: Ralston S. Alexander, Q.C., Chair, G. Ronald Toews, Q.C., Ross Tunnicliffe

20.

[Zahra Jenab](#) | *Decision of the Hearing Panel*

2006 LSBC 30 Report issued : August 02 , 2006 Oral Reasons : July 26 , 2006 Citation issued : October 5 , 2005 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Zahra Jenab Respondent Decision of the Hearing Panel Hearing date :... [Read full decision](#)

Panel: Leon Getz, Q.C., Chair, Kathryn A. Berge, Q.C., Michael Falkins

21.

[Re Lawyer 3](#) | *Decision on Penalty*

2006 LSBC 13 Report issued : April 19 , 2006 Citation issued : April 28 , 2004 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Re : Lawyer 3 Respondent Decision of the Hearing Panel Hearing date : March 23 , 2006 Panel : Rober... [Read full decision](#)

Panel: Robert W. McDiarmid, Q.C., Single Bench Panel

22.

[Shawn Morgan MacDonald](#) | *Decision of the Hearing Panel*

2006 LSBC 01 Report issued : January 9 , 2006 Oral Reasons : December 8 , 2005 Citation issued : June 8 , 2004 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Shawn MacDonald Respondent Decision of the Hearing Panel Hearing date... [Read full decision](#)

Panel: Patricia Schmit, Q.C., Chair, William Sullivan, Q.C., Gavin Hume, Q.C.

23.

[David John Charles Martin](#) | *Decision on Penalty*

2006 LSBC 15 Report issued : April 25 , 2006 Citation issued : September 9 , 2004 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning David John Martin Respondent Decision of the Hearing Panel on Penalty Hearing date : December 7... [Read full decision](#)

Panel: Ross Tunnicliffe, Chair, Patricia L. Schmit, Q.C., Bruce A. LeRose

24.

[David John Charles Martin](#) | *Decision Stay Application*

2006 LSBC 22 Report issued : May 26 , 2006 Citation issued : September 9 , 2004 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and an application for a stay of proceedings concerning David John Martin Applicant Decision Application date : May 23 , 20... [Read full decision](#) Benchers: Gavin Hume, Q.C.

25.

[William Frederick McGuire](#) | *Decision on Penalty*

2006 LSBC 20 Report issued : May 12 , 2006 Citation issued : February 18 , 2004 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning William Frederick McGuire Respondent Decision of the Hearing Panel on Penalty Hearing date : April... [Read full decision](#) Panel: Joost Blom, Q.C., Chair, William M. Trotter, Q.C., Donald A. Silversides, Q.C.

26.

[Jeffrey Francis Murray](#) | *Decision of the Hearing Panel*

2006 LSBC 47 Report issued : December 6 , 2006 Oral Reasons : November 16 , 2006 Citation issued : September 11 , 2006 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Jeffrey Francis Murray Respondent Decision of the Hearing P... [Read full decision](#) Panel: Leond Getz, Q.C., Chair, William Sullivan, Q.C., Gerald Kambeitz, Q.C.

27.

[Nives Emilia Italia Racette](#) | *Decision on Penalty*

2006 LSBC 29 Report issued : July 20 , 2006 Citations issued : February 26 , 2004 and July 21 , 2004 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Nives Emilia Racette Respondent Decision of the Hearing Panel on Penalty Hear... [Read full decision](#) Panel: James D. Vilvang, Q.C., Single Benchers Panel

28.

[Justis Raynier](#) | *Decision on Facts and Verdict*

2006 LSBC 44 Report issued : November 17 , 2006 Citation issued : November 7 , 2005 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Justis Raynier Respondent Decision of the Hearing Panel on Facts and Verdict Hearing date : Oc... [Read full decision](#) Panel: Bruce LeRose, Chair, Patricia Schmit, Q.C., Ross Tunnicliffe

29.

[Maneesh Saini](#) | *Decision of the hearing panel*

2006 LSBC 35 Report issued : September 18 , 2006 Oral Reasons : August 2 , 2006 Citation issued : January 3 , 2006 The Law Society of British Columbia In the matter of the Legal

Profession Act , SBC 1998 , c . 9 and a hearing concerning Maneesh Saini Respondent Decision of the Hearing Panel Hearing... [Read full decision](#)

Panel: Bruce LeRose, Chair, Patricia Schmit, Q.C., Ross Tunnicliffe

30.

[Michael Lee Seifert](#) | *Decision of the Pre-Hearing Benchers*

2006 LSBC 11 Report issued : April 10 , 2006 Citation issued : July 15 , 2005 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a pre - hearing conference concerning Michael Lee Seifert Respondent Decision of the Pre - Hearing Panel Pre - hearing da... [Read full decision](#)

Benchers: Dirk Sigalet, QC

31.

[Michael Lee Seifert](#) | *Decision on Preliminary Application*

2006 LSBC 51 Report issued : December 21 , 2006 Citation issued : July 15 , 2005 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a preliminary application concerning Michael Lee Seifert Respondent Decision of the Hearing Panel Hearing date : Augus... [Read full decision](#)

Panel: Gordon Turriff, QC, Chair, Ralston S. Alexander, QC, Richard Stewart

32.

[Michael Lee Seifert](#) | *Decision of Hearing Panel on Preliminary Application*

2006 LSBC 52 Report issued : December 21 , 2006 Citation issued : July 15 , 2005 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a preliminary application concerning Michael Lee Seifert Respondent Decision of the Hearing Panel Hearing date : Augus... [Read full decision](#)

Panel: Gordon Turriff, QC, Chair, Richard Stewart, QC, Ralston Alexander, QC

33.

[Alan James Short](#) | *Decision of Three Benchers*

2006 LSBC 33 Report issued : September 12 , 2006 Oral Reasons : September 7 , 2006 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a s . 39 proceeding concerning Alan James Short Respondent Decision of Three Benchers Proceeding date : September 7... [Read full decision](#)

Benchers: G. Glen Ridgway, QC, Chair, William Jackson, Dirk Sigalet, QC

34.

[Donald Wayne Skogstad](#) | *Decision on Preliminary Application*

2006 LSBC 39 Report issued : October 18 , 2006 Citation issued : February 15 , 2005 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a preliminary application concerning Donald Wayne Skogstad Respondent Decision of the Hearing Panel Written submiss... [Read full decision](#)

Panel: Robert W. McDiarmid, QC, Chair, Thelma O'Grady, Ralston S. Alexander, QC

35.

Donald Wayne Skogstad | *Decision on Preliminary Application*

2006 LSBC 40 Report issued : October 24 , 2006 Citation issued : February 15 , 2005 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a preliminary application concerning Donald Wayne Skogstad Respondent Decision of the Hearing Panel Written Submiss... [Read full decision](#)

Panel: Robert W. McDiarmid, QC, Chair, Thelma O'Grady, Ralston S. Alexander, QC

36.

Donald Wayne Skogstad | *Decision of the Hearing Panel*

2006 LSBC 43 Report issued : November 9 , 2006 Citation issued : February 15 , 2005 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a ruling on an objection concerning Donald Wayne Skogstad Respondent Decision of the Hearing Panel Hearing date : N... [Read full decision](#)

Panel: Robert W. McDiarmid, QC, Chair, Thelma O'Grady, Ralston S. Alexander, QC

37.

Lorne Irving Smiley | *Decision of Hearing Panel*

2006 LSBC 31 Report issued : August 9 , 2006 Oral Reasons : July 26 , 2006 Citation issued : March 10 , 2005 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Lorne Irving Smiley Respondent Decision of the Hearing Panel Hearing... [Read full decision](#)

Panel: Leon Getz, Q.C., Chair, Kathryn Berge, Q.C., Michael Falkins

38.

Kenneth Joseph Spears | *Decision of the Hearing Panel*

2006 LSBC 09 Report issued : March 10 , 2006 Oral Reasons : February 27 , 2006 Citations issued : February 24 , 2005 and September 20 , 2005 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Kenneth Joseph Spears Respondent Deci... [Read full decision](#)

Panel: Gavin Hume, Q.C., Chair, Thelma O'Grady, Dirk Sigalet, Q.C.

39.

David Kok Kwong Tsang | *Decision on Penalty*

2006 LSBC 17 Report issued : May 03 , 2006 Citations issued : May 6 , 2004 , June 9 , 2004 and September 2 , 2004 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning David Kok Kwong Tsang Respondent Decision of the Hearing Panel o... [Read full decision](#)

Panel: Ralston S. Alexander, Q.C., Chair, Anne K. Wallace, Q.C., Dirk Sigalet, Q.C.

40.

Parmjit Singh Virk | *Hearing Panel Decision*

2006 LSBC 26 Report issued : June 21 , 2006 Oral Reasons : June 9 , 2006 Citation issued : January 24 , 2006 The Law Society of British Columbia In the matter of the Legal Profession

Act , SBC 1998 , c . 9 and a hearing concerning Parmjit Singh Virk Respondent Decision of the Hearing Panel Hearing d... [Read full decision](#)
Panel: Gordon Turriff, Q.C., Chair, Bruce LeRose, Gavin Hume, Q.C.

2005- Discipline Decisions

2005 LSBC Discipline Committee Composition Benchers

1. R.W. McDiarmid QC (Chair)
2. I. Donaldson, QC 3. J.J.L. Hunter, QC
4. W. Jackson T.E.
5. La Liberté, QC
6. P. Nagle J. Preston
7. A.E. Vertlieb, QC
8. J.D. Vilvang, QC
9. J.S. Shackell, QC (Life Bencher)

Non-Benchers

10. Rita Andreone
11. Dan Bennett
12. Jo Ann Carmichael, QC
13. Jan Lindsay Cameron

Conflicts of Interest -2005 (5)

1. Robert McDiarmid, Q.C - [Sheldon Goldberg](#) - 2005 LSBC 10
2. Robert W. McDiarmid, Q.C - [Sheldon Goldberg](#) - 2005 LSBC 22
3. Robert W. McDiarmid, Q.C., - [Sanjeev Sanj Rai](#) - 2005 LSBC 37
4. John J.L. Hunter, Q.C., - [Rudi Gellert](#) - 2005 LSBC 15
5. William Jackson - [James Neil Rodgers](#) - 2005 LSBC 42

2005 Decisions

2005

1. G. Glen Ridgway, Q.C., Chair, Gordon Turriff, Q.C., Gregory M. Rideout
2. G. Glen Ridgway, Q.C., Chair, Gordon Turriff, Q.C., Gregory M. Rideout
3. Ralston S. Alexander, Q.C., Chair, Robert C. Brun, Q.C., Richard S. Margetts, Q.C.
4. Carol Hickman, Chair, Hugh Legg, Q.C., Dr. Maelor Vallance
5. Carol W. Hickman, Chair, Hugh Legg, Q.C., Dr. Maelor Vallance
6. James Vilvang, Q.C., Single Bencher Panel

7. Anna Fung, Q.C., Chair, Patricia L. Schmit, Q.C., Michael Falkins, Dirk Sigalet, Q.C., Dr. Maelor Vallance, Margaret Ostrowski, Q.C., Carol Hickman, Bruce LeRose
8. G. Glen Ridgway, QC, Chair, Michael Falkins, Robert C. Brun, QC
9. John J.L. Hunter, Q.C., Single Bencher Panel
10. David Zacks, Q.C., Joost Blom, Q.C., Dirk Sigalet, Q.C.
11. Ralston S. Alexander, Q.C., Chair, G. Glen Ridgway, Q.C., William J. Sullivan, Q.C.
12. Anne Wallace, Q.C., Single Bencher Panel
13. Majority Decision: Patricia Schmit, Q.C., Chair, Glen Ridgway, Q.C., Dissent/Minority Decision: Robert McDiarmid, Q.C.
14. Patricia L. Schmit, Q.C., Chair, G. Glen Ridgway, Q.C., Robert W. McDiarmid, Q.C
15. Anne Wallace, Q.C., Single Bencher Pane
16. Ross D. Tunnicliffe, Chair, Gavin Hume, QC, Robert Brun, QC
17. Ralston S. Alexander, Q.C., Chair, Ross Tunnicliffe, G. Ronald Toews, Q.C.
18. Gordon Turriff, Q.C., Single Bencher Panel
19. Patricia L. Schmit, Q.C., Single Bencher Panel
20. James D. Vilvang, Q.C., Single Bencher Panel
21. James Vilvang , Q.C., Chair, David Zacks, Q.C., Dirk Sigalet, Q.C.
22. James Vilvang, Q.C. , Chair, David Zacks, Q.C., Dirk Sigalet, Q.C.
23. James Vilvang, Q.C. Darrell O'Byrne, Q.C. Gregory Rideout Margaret Ostrowski, Q.C. Dissent/Minority decision: Ralston S. Alexander, Q.C., Chair Patricia Schmit, Q.C. Anne Wallace, Q.C.
24. Ross Tunnicliffe, Chair, Dirk Sigalet, Q.C., Joost Blom, Q.C., Carol Hickman, Glen Ridgway, Q.C., Michael Falkins Concurring decision: Greg Rideout 25. Ralston S. Alexander, Q.C., Single Bencher Panel
26. Dirk Sigalet, Q.C.
27. Majority decision: Gavin Hume, Q.C. Dr. Maelor Vallance Patrick Kelly Carol Hickman Robert Brun, Q.C. Concurring decision: Gregory Rideout Minority decision: Bruce LeRose Minority decision: Gordon Turriff, Q.C.
28. Gordon Turriff, Q.C., Chair, Gavin Hume, Q.C., Warren Wilson, Q.C.
29. Ross D. Tunnicliffe, Chair, Patricia L. Schmit, QC, Bruce A. LeRose
30. Joost Blom, Q.C., Chair, Donald A. Silversides, Q.C., William M. Trotter, Q.C.
31. Majority Decision: Patricia Schmit, Q.C., Chair, Joost Blom, Q.C., Gavin Hume, Q.C., Bruce LeRose, Gregory Rideout, Grant Taylor, Q.C., June Preston, Terence La Liberte, Q.C., Darrell O'Byrne, Q.C., Lilian To, Dr. Maelor Vallance, Gordon Turriff, Q.C., David Zacks, Q.C.
32. Ralston S. Alexander, Q.C., Single Bencher Panel
33. James Vilvang, Q.C., Single Bencher Panel
34. Robert W. McDiarmid, Q.C., Chair, Robert C. Brun, Q.C., G. Glen Ridgway, Q.C
35. David Zacks, Q.C., Chair, William Jackson, Terence La Liberte, Q.C.
36. Ralston S. Alexander, Q.C., Single Bencher Panel
37. Dirk J. Sigalet, Q.C., Chair, Warren Wilson, Q.C., Joost Blom, Q.C.
38. Patricia L. Schmit, Q.C., Single Bencher Panel
39. Ralston S. Alexander, Q.C., Single Bencher Panel

40. Ralston S. Alexander, Q.C., Chair, Anne Wallace, Q.C., Dirk Sigalet, Q.C.
41. Anna Fung, Q.C., Chair, Michael Falkins, G. Glen Ridgway, Q.C.
42. Ralston S. Alexander, Q.C., Chair, G. Glen Ridgway, Q.C., Gerald Lecovin, Q.C
43. : Bruce LeRose
44. Ralston S. Alexander, QC, Chair, Gordon Turriff, QC, Joost Blom, QC 45. Grant C. Taylor, Q.C., Chair, Gavin Hume, Q.C., Warren Wilson, Q.C. 46. Ralston S. Alexander, QC, Chair, Joost Blom, QC, Gordon Turriff, QC
47. Grant C. Taylor, Q.C., Chair, Gavin Hume, Q.C., Warren Wilson, Q.C.

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B. McKinley G. Myers M. Robertson E. van Eck A. Winograd

1.

Sidney Stephen Antle | *Decision of the Hearing Panel*

2005 LSBC 45 Report issued : October 28 , 2005 Oral Reasons : October 4 , 2005 Citation issued : April 19 , 2005 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Sidney Stephen Antle Respondent Decision of the Hearing Panel Hea... [Read full decision](#)

Panel: G. Glen Ridgway, Q.C., Chair, Gordon Turriff, Q.C., Gregory M. Rideout

2.

Raghbir Singh Basi | *Decision on Verdict and Penalty*

2005 LSBC 01 Report issued : January 14 , 2005 Citations issued : May 26 , 2003 , June 22 , 2004 July 6 , 2004 and November 16 , 2004 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning RAGHBIR SINGH BASI Respondent Decision of th... [Read full decision](#)

Panel: G. Glen Ridgway, Q.C., Chair, Gordon Turriff, Q.C., Gregory M. Rideout

3.

Raghbir Singh Basi | *Decision on Facts and verdict*

2005 LSBC 41 Report issued : October 6 , 2005 Citation issued : June 29 , 2005 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Raghbir Singh Basi Respondent Decision of the Hearing Panel on Facts and Verdict Hearing date : Sep... [Read full decision](#)

Panel: Ralston S. Alexander, Q.C., Chair, Robert C. Brun, Q.C., Richard S. Margetts, Q.C.

4.

Howard Raymond Berge | *Decision on Facts and verdict*

2005 LSBC 28 Report issued : July 14 , 2005 Citation issued : June 30 , 2004 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing

concerning Howard Raymond Berge , Q.C . Respondent Decision of the Hearing Panel on Facts and Verdict Hearing da... [Read full decision](#)

Panel: Carol Hickman, Chair, Hugh Legg, Q.C., Dr. Maelor Vallance

5.

[Howard Raymond Berge](#) | *Decision on Penalty*

2005 LSBC 53 Report issued : December 19 , 2005 Citation issued : July 30 , 2004 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Howard Raymond Berge , Q.C . Respondent Decision of the Hearing Panel on Penalty Hearing date : O... [Read full decision](#)

Panel: Carol W. Hickman, Chair, Hugh Legg, Q.C., Dr. Maelor Vallance

6.

[Kevin Patrick Doyle](#) | *Decision of the Hearing Panel*

2005 LSBC 06 Report issued : February 14 , 2005 Oral Reasons : February 3 , 2005 Citation issued : February 19 , 2004 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Kevin Patrick Doyle Respondent Decision of the Hearing Panel... [Read full decision](#)

Panel: James Vilvang, Q.C., Single Benchers Panel

7.

[Kevin Patrick Doyle](#) | *Decision of the Benchers on Review*

2005 LSBC 24 Report issued : July 25 , 2005 Citation issued : February 19 , 2005 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a section 47 review concerning Kevin Patrick Doyle Respondent Decision of the Benchers on Review Review date : May 26... [Read full decision](#)

Quorum: Anna Fung, Q.C., Chair, Patricia L. Schmit, Q.C., Michael Falkins, Dirk Sigalet, Q.C., Dr. Maelor Vallance, Margaret Ostrowski, Q.C., Carol Hickman, Bruce LeRose

8.

[Crawford Grant Edwards](#) | *Decision of Three Benchers*

2005 LSBC Report issued : September 16 , 2005 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a s . 39 proceeding concerning Crawford Grant Edwards Respondent Decision of Three Benchers Hearing date : September 14 , 2005 Panel : G . Glen Ridgway ,... [Read full decision](#)

Panel: G. Glen Ridgway, QC, Chair, Michael Falkins, Robert C. Brun, QC

9.

[Rudi Gellert](#) | *Decision on Penalty*

2005 LSBC 15 Report issued : May 2 , 2005 Citations issued : May 8 , 2002 , October 2 , 2002 June 20 , 2003 and January 12 , 2004 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Rudi Gellert Respondent Decision of the Hearing... [Read full decision](#)

Panel: John J.L. Hunter, Q.C., Single Benchers Panel 10.

Danine Lorraine Geronazzo | *Decision on Penalty*

2005 LSBC 12 Report issued : April 4 , 2005 Citation issued : July 9 , 2002 Citation amended : February 12 , 2004 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Danine Lorraine Geronazzo Respondent Decision of the Hearing Panel... [Read full decision](#)

Panel: David Zacks, Q.C., Joost Blom, Q.C., Dirk Sigalet, Q.C.

11.

Danine Lorraine Geronazzo | *Decision on Facts and verdict*

2005 LSBC 40 Report issued : October 3 , 2005 Citation issued : February 1 , 2005 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Danine Lorraine Geronazzo Respondent Decision of the Hearing Panel on Facts and Verdict Hearing... [Read full decision](#)

Panel: Ralston S. Alexander, Q.C., Chair, G. Glen Ridgway, Q.C., William J. Sullivan, Q.C.

12.

Larry William Goddard | *Decision on Facts and verdict*

2005 LSBC 26 Report issued : June 27 , 2005 Citation issued : April 22 , 2004 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Larry William Goddard Respondent Decision of the Hearing Panel Hearing date : June 8 , 2005 Panel :... [Read full decision](#)

Panel: Anne Wallace, Q.C., Single Bench Panel

13.

Sheldon Goldberg | *Decision on Facts and verdict*

2005 LSBC 10 Report issued : March 14 , 2005 Citation issued : May 19 , 2004 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning SHELDON GOLDBERG Respondent Decision of the Hearing Panel on Facts and Verdict Hearing date : October... [Read full decision](#)

Panel: Majority Decision: Patricia Schmit, Q.C., Chair, Glen Ridgway, Q.C., Dissent/Minority Decision: Robert McDiarmid, Q.C.

14.

Sheldon Goldberg | *Decision on Penalty*

2005 LSBC 22 Report issued : June 1 , 2005 Citation issued : May 19 , 2004 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning SHELDON GOLDBERG Respondent Decision of the Hearing Panel on Penalty Hearing date : May 26 , 2005 Panel... [Read full decision](#)

Panel: Patricia L. Schmit, Q.C., Chair, G. Glen Ridgway, Q.C., Robert W. McDiarmid, Q.C.

15.

David Robert Greig | *Decision of the Hearing Panel*

2005 LSBC 20 Report issued : May 30 , 2005 Oral Reasons : May 12 , 2005 Citation issued : December 15 , 2005 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning David Robert Greig Respondent Decision of the Hearing Panel Hearing d... [Read full decision](#)
Panel: Anne Wallace, Q.C., Single Benchers Panel

16.

James Douglas Hall | *Decision of Three Benchers*

2005 LSBC 51 Report issued : November 18 , 2005 Oral Reasons : November 8 , 2005 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a s . 39 proceeding concerning James Douglas Hall Respondent Decision of Three Benchers Hearing date : November 8 , 20... [Read full decision](#)
Panel: Ross D. Tunnicliffe, Chair, Gavin Hume, QC, Robert Brun, QC

17.

Dale Bruce Harder | *Decision on Facts and verdict*

2005 LSBC 48 Report issued : November 10 , 2005 Citation issued : March 26 , 2003 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Dale Bruce Harder Respondent Decision of the Hearing Panel on Facts and Verdict Hearing date : A... [Read full decision](#)
Panel: Ralston S. Alexander, Q.C., Chair, Ross Tunnicliffe, G. Ronald Toews, Q.C.

18.

Richard Roy Hendery | *Decision of the Hearing Panel*

2005 LSBC 25 Report issued : June 2 , 2005 Citation issued : May 3 , 2004 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Richard Hendery Respondent Decision of the Hearing Panel Hearing date : April 5 , 2005 Panel : Gordon Tu... [Read full decision](#)
Panel: Gordon Turriff, Q.C., Single Benchers Panel

19.

Ian Armstrong Hobbs | *Decision of the Hearing Panel*

2005 LSBC 30 Report issued : July 18 , 2005 Oral Reasons : July 14 , 2005 Citation issued : February 8 , 2005 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Ian Armstrong Hobbs Respondent Decision of the Hearing Panel Hearing... [Read full decision](#) Panel: Patricia L. Schmit, Q.C., Single Benchers Panel

20.

Alexander Jeletzky | *Decision on Penalty*

2005 LSBC 02 Report issued : January 14 , 2005 Citation issued : February 20 , 2003 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Alexander Jeletzky Respondent Decision of the Hearing Panel on Penalty

Hearing date : November... [Read full decision](#)
Panel: James D. Vilvang, Q.C., Single Bench Panel

21.

[Brian John Kirkhope](#) | *Decision on Facts and verdict*

2005 LSBC 23 Report issued : June 1 , 2005 Citation issued : September 1 , 2004 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Brian John Kirkhope Respondent Decision of the Hearing Panel on Facts and Verdict Hearing date : J... [Read full decision](#)

Panel: James Vilvang , Q.C., Chair, David Zacks, Q.C., Dirk Sigalet, Q.C.

22.

[Brian John Kirkhope](#) | *Decision on Penalty*

2005 LSBC 47 Report issued : November 8 , 2005 Oral Reasons : October 27 , 2005 Citation issued : September 1 , 2004 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Brian John Kirkhope Respondent Decision of the Hearing Panel... [Read full decision](#)

Panel: James Vilvang, Q.C. , Chair, David Zacks, Q.C., Dirk Sigalet, Q.C.

23.

[Re Lawyer 2](#) | *Section 47 Review report (Citation dismissed)*

2005 LSBC 13 Report issued : April 8 , 2005 Citation issued : January 23 , 2003 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a section 47 review concerning Re : Lawyer 2 Respondent Decision of the Benchers on Review Hearing date : December 15 ,... [Read full decision](#)

Majority decision: James Vilvang, Q.C. Darrell O'Byrne, Q.C. Gregory Rideout Margaret Ostrowski, Q.C. Dissent/Minority decision: Ralston S. Alexander, Q.C., Chair Patricia Schmit, Q.C. Anne Wallace, Q.C.

24.

[Re Lawyer 3](#) | *Bench Review decision*

2005 LSBC 35 Report issued : November 2 , 2005 Citation issued : April 28 , 2004 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a section 47 review concerning Re : Lawyer 3 Respondent Decision of the Benchers Review date : July 14 , 2005 Quorum :... [Read full decision](#)

Quorum: Majority Decision: Ross Tunnicliffe, Chair, Dirk Sigalet, Q.C., Joost Blom, Q.C., Carol Hickman, Glen Ridgway, Q.C., Michael Falkins Concurring decision: Greg Rideout

25.

[Re Lawyer 4](#) | *Decision on Penalty*

2005 LSBC 05 Report issued : February 3 , 2005 Citation issued : April 17 , 2002 The decision is published anonymously as the Court of Appeal overturned the decision The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Re : Lawyer... [Read full decision](#)

Panel: Ralston S. Alexander, Q.C., Single Benchers Panel 26.

Re Lawyer 5 | *Decision of the Hearing Panel*

2005 LSBC 11 Report issued : April 4 , 2005 Oral Reasons : March 9 , 2005 Citation issued : October 20 , 2003 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Re : Lawyer 5 Respondent Decision of the Hearing Panel Hearing date... [Read full decision](#)

Panel: Dirk Sigalet, Q.C.

27.

Re Lawyer 5 | *Benchers Review decision*

2005 LSBC 50 Report issued : November 16 , 2005 Citation issued : October 20 , 2003 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a section 47 review concerning Re : Lawyer 5 Respondent Decision of the Benchers Review date : October 21 , 2005 Qu... [Read full decision](#)

Quorum: Majority decision: Gavin Hume, Q.C. Dr. Maelor Vallance Patrick Kelly Carol Hickman Robert Brun, Q.C. Concurring decision: Gregory Rideout Minority decision: Bruce LeRose Minority decision: Gordon Turriff, Q.C.

28.

Re Lawyer 6 | *Decision of the Hearing Panel (Citation dismissed)*

2005 LSBC 33 Report issued : September 29 , 2005 Citation issued : March 10 , 2004 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Re : Lawyer 6 Respondent Decision of the Hearing Panel Hearing date : July 27 , 2005 Panel : Go... [Read full decision](#)

Panel: Gordon Turriff, Q.C., Chair, Gavin Hume, Q.C., Warren Wilson, Q.C.

29.

David John Charles Martin | *Decision on Facts and Verdict*

2005 LSBC 16 Report issued : September 7 , 2005 Citation issued : September 9 , 2004 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning David John Martin Respondent Decision of the Hearing Panel on Facts and Verdict Hearing date... [Read full decision](#)

Panel: Ross D. Tunnicliffe, Chair, Patricia L. Schmit, QC, Bruce A. LeRose 30.

William Frederick McGuire | *Decision on Facts and verdict*

2005 LSBC 43 Report issued : October 6 , 2005 Citation issued : February 18 , 2004 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning William Frederick McGuire Respondent Decision of the Hearing Panel on Facts and Verdict Hearing... [Read full decision](#)

Panel: Joost Blom, Q.C., Chair, Donald A. Silversides, Q.C., William M. Trotter, Q.C.

31.

Robert Gordon Milne | *Decision of the Benchers on Review*

2005 LSBC 14 Report issued : April 28 , 2005 Oral Reasons : April 8 , 2005 Citation issued : February 11 , 2004 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a s . 47 Review concerning Robert Gordon Milne Respondent Decision of the Benchers on R... [Read full decision](#)

Quorum: Majority Decision: Patricia Schmit, Q.C., Chair, Joost Blom, Q.C., Gavin Hume, Q.C., Bruce LeRose, Gregory Rideout, Grant Taylor, Q.C., June Preston, Terence La Liberte, Q.C., Darrell O'Byrne, Q.C., Lilian To, Dr. Maelor Vallance, Gordon Turriff, Q.C., David Zacks, Q.C.

32.

[John Walter Motiuk](#) | *Decision of the Hearing Panel*

2005 LSBC 21 Report issued : July 8 , 2005 Oral Reasons : May 25 , 2005 Citation issued : November 25 , 2004 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning William Fredric Murray Respondent Decision of the Hearing Panel Heari... [Read full decision](#)

Panel: Ralston S. Alexander, Q.C., Single Bencher Panel

33.

[Nives Emilia Italia Racette](#) | *Decision on Facts and verdict*

2005 LSBC 36 Report issued : September 9 , 2005 Oral Reasons : July 26 , 2005 Citations issued : February 26 , 2004 and July 21 , 2004 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Nives Emilia Racette Respondent Decision of... [Read full decision](#)

Panel: James Vilvang, Q.C., Single Bencher Panel

34.

[Sanjeev Sanj Rai](#) | *Decision of the Hearing Panel*

2005 LSBC 37 Report issued : September 9 , 2005 Oral Reasons : August 24 , 2005 Citation issued : January 11 , 2005 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Sanjeev Sanj Rai Respondent Decision of the Hearing Panel Hear... [Read full decision](#)

Panel: Robert W. McDiarmid, Q.C., Chair, Robert C. Brun, Q.C., G. Glen Ridgway, Q.C.

35.

[James Neil Rodgers](#) | *Decision on Penalty*

2005 LSBC 42 Report issued : October 20 , 2005 Citation issued : December 5 , 2003 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning James Neil Rodgers Respondent Decision of the Hearing Panel on Penalty Hearing date : April 28... [Read full decision](#)

Panel: David Zacks, Q.C., Chair, William Jackson, Terence La Liberte, Q.C.

36.

[Randeep Singh Sarai](#) | *Decision of the Hearing Panel*

2005 LSBC 17 Report issued : May 9 , 2005 Citation issued : July 23 , 2003 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Randeep Singh Sarai Respondent Decision of the Hearing Panel Hearing date : February 14 , 2005 Panel :... [Read full decision](#)
Panel: Ralston S. Alexander, Q.C., Single Bencher Panel

37.

[Gregory Allan Smith](#) | *Decision of the Hearing Panel*

2005 LSBC 27 Report issued : July 15 , 2005 Oral Reasons : May 30 , 2005 Citation issued : June 23 , 2003 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Gregory Allan Smith Respondent Decision of the Hearing Panel Hearing date... [Read full decision](#)
Panel: Dirk J. Sigalet, Q.C., Chair, Warren Wilson, Q.C., Joost Blom, Q.C.

38.

[Stephen Neville Suntok](#) | *Decision of the Hearing Panel*

2005 LSBC 29 Report issued : July 15 , 2005 Citation issued : September 1 , 2004 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Stephen Neville Suntok Respondent Decision of the Hearing Panel Hearing date : May 27 , 2005 Panel... [Read full decision](#) Panel: Patricia L. Schmit, Q.C., Single Bencher Panel

39.

[Kenneth Nicholas Taschuk](#) | *Decision of the Hearing Panel*

2005 LSBC 07 Report issued : February 17 , 2005 Oral Reasons : February 11 , 2005 Citation issued : January 28 , 2004 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning KENNETH NICHOLAS TASCHUK Respondent Decision of the Hearing... [Read full decision](#)
Panel: Ralston S. Alexander, Q.C., Single Bencher Panel

40.

[David Kok Kwong Tsang](#) | *Decision on Facts and verdict*

2005 LSBC 18 Report issued : May 11 , 2005 Citations issued : June 29 , 2004 , August 26 , 2004 , and November 16 , 2004 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning David Kok Kwong Tsang Respondent Decision of the Hearing... [Read full decision](#)
Panel: Ralston S. Alexander, Q.C., Chair, Anne Wallace, Q.C., Dirk Sigalet, Q.C.

41.

[Marianne Walters](#) | *Decision of the Hearing Panel*

2005 LSBC 39 Report issued : September 16 , 2005 Citation issued : March 29 , 2005 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Marianne Walters Respondent Decision of the Hearing Panel Hearing date :

July 7 , 2005 Panel :... [Read full decision](#)

Panel: Anna Fung, Q.C., Chair, Michael Falkins, G. Glen Ridgway, Q.C.

42.

[Douglas Warren Welder](#) | *Decision of the Hearing Panel*

2005 LSBC 49 Report issued : November 16 , 2005 Citation issued : February 9 , 2005 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Douglas Welder Respondent Decision of the Hearing Panel Hearing date : July 22 , 2005 Panel :... [Read full decision](#)

Panel: Ralston S. Alexander, Q.C., Chair, G. Glen Ridgway, Q.C., Gerald Lecovin, Q.C

43.

[Douglas Warren Welder](#) | *Decision on application for stay*

2005 LSBC 52 Report issued : November 23 , 2005 Citation issued : February 9 , 2005 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Douglas Welder Applicant Decision Application date : November 22 , 2005 Benchers : Bruce LeRose... [Read full decision](#)

Benchers: Bruce LeRose

44.

[Robert Earl Williamson](#) | *Decision of Three Benchers*

2005 LSBC 03 Report issued : February 7 , 2005 Oral Reasons : January 13 , 2005 Citation issued : January 13 , 2005 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and an application pursuant to Rule 4 - 19 concerning Robert Earl Williamson Respondent... [Read full decision](#)

Panel: Ralston S. Alexander, QC, Chair, Gordon Turriff, QC, Joost Blom, QC

45.

[Robert Earl Williamson](#) | *Decision on Facts and verdict*

2005 LSBC 04 Report issued : January 25 , 2005 Citations issued : April 29 , 2003 , July 23 , 2003 , March 8 , 2004 ; and amended June 8 , 2004 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning ROBERT EARL WILLIAMSON Respondent... [Read full decision](#)

Panel: Grant C. Taylor, Q.C., Chair, Gavin Hume, Q.C., Warren Wilson, Q.C.

46.

[Robert Earl Williamson](#) | *Decision of Three Benchers*

2005 LSBC 09 Report issued : February 28 , 2005 Oral Reasons : February 14 , 2005 Citation issued : January 13 , 2005 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and an application pursuant to Rule 4 - 19 concerning Robert Earl Williamson Responde... [Read full decision](#)

Panel: Ralston S. Alexander, QC, Chair, Joost Blom, QC, Gordon Turriff, QC

47.

Robert Earl Williamson | *Decision on Penalty*

2005 LSBC 19 Report issued : May 13 , 2005 Citations issued : April 19 , 2003 , July 23 , 2003 , March 8 , 2004 and amended June 8 , 2004 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Robert Earl Williamson Respondent Decisi... [Read full decision](#)

Panel: Grant C. Taylor, Q.C., Chair, Gavin Hume, Q.C., Warren Wilson, Q.C.

2004- Discipline Decisions

LSBC Discipline Committee Composition Discipline

Benchers:

1. P.J. Keighley, QC (Chair, Jan-Feb),
2. A.K. Fung, QC (Chair, Mar- Dec),
3. I. Donaldson, QC,
4. J.J.L. Hunter, QC,
5. W. Jackson,
6. P. Nagle,
7. J. Preston,
8. A.E. Vertlieb, QC,
9. D.W. Gibbons, QC (Life Bencher),
10. J.S. Shackell, QC (Life Bencher),
11. G.R. Toews, QC (Life Bencher)

Non-Benchers:

1. Rita Andreone,
2. Jo Ann Carmichael, QC,
3. Diane Turner

Staff: S. Cameron, H. Caldwell, M. Currie, J. Dent, T. Follett, J. Gossen, L. Hlus, T. Holmes, K. Kim, R. Long, P. Martinuk, B. Mitovic, G. Myers, M. Robertson, E. van Eck

CONFLICTS OF INTEREST -2004 (12)

1. John Hunter, Q.C., Single Bencher Panel - [Rudi Gellert](#) - 2004 LSBC 28 -
2. June Preston - [Peter Wallace Hammond](#) - 2004 LSBC 18
3. June Preston - [Peter Wallace Hammond](#) - 2004 LSBC 21
4. June Preston - [Peter Wallace Hammond](#) - 2004 LSBC 32
5. Art Vertlieb, Q.C. - [Timothy John Hordal](#) - 2004 LSBC 36
6. Art Vertlieb, Q.C., - [Re Lawyer 2](#) - 2004 LSBC 09
7. Art Vertlieb, Q.C., - [Re: Lawyer 2](#) - 2004 LSBC 42
8. Art Vertlieb, Q.C., [Robert Gordon Milne](#) - 2004 LSBC 19
9. G. Ronald Toews - [James Douglas Hall](#) - 2004 LSBC 01
10. G. Ronald Toews - [Martin David Jones](#) - 2004 LSBC 10
11. G. Ronald Toews - [Martin David Jones](#) - 2004 LSBC 37
12. G. Ronald Toews - [Brian Maurice Legge](#) - 2004 LSBC 02

2004 Decisions

1. G. Glen Ridgway, Q.C., Chair, Gordon Turriff, Q.C., Gregory M. Rideout
2. G. Glen Ridgway, Q.C., Chair, Gordon Turriff, Q.C., Gregory M. Rideout
3. Ralston S. Alexander, Q.C., Chair, Robert C. Brun, Q.C., Richard S. Margetts, Q.C.
4. Carol Hickman, Chair, Hugh Legg, Q.C., Dr. Maelor Vallance
5. Carol W. Hickman, Chair, Hugh Legg, Q.C., Dr. Maelor Vallance
6. James Vilvang, Q.C., Single Bencher Panel
7. Grant C. Taylor, Single Bencher Panel
8. Grant C. Taylor, Single Bencher Panel
9. Gordon Turriff, Q.C., Single Bencher Panel
10. John Hunter, Q.C., Single Bencher Panel
11. David Zacks, Q.C., Chair, Joost Blom, Q.C., Dirk Sigalet, Q.C.
12. G. Ronald Toews, Q.C., Chair, Patricia Schmit, Q.C., G. Glen Ridgway, Q.C.
13. G. Glen Ridgway, Q.C., Chair, Robert Gourlay, Q.C., Bruce LeRose
14. G. Glen Ridgway, Q.C., Chair, Robert Gourlay, Q.C., Bruce A. LeRose
15. Ralston S. Alexander, Q.C., Chair, Margaret Ostrowski, Q.C., June Preston
16. Ralston S. Alexander, Q.C., Chair, Margaret Ostrowski, Q.C., June Preston
17. Ralston S. Alexander, Q.C., Chair, Margaret Ostrowski, Q.C., June Preston (Lay Bencher)
18. Patricia L. Schmit, Q.C., Single Bencher Panel
19. Patricia Schmit, Q.C., Single Bencher
20. Patricia Schmit, Q.C., Chair, Gavin Hume, Q.C., Terence La Liberte, Q.C.
21. Patricia Schmit, Q.C., Chair, Gavin Hume, Q.C., Terence La Liberte, Q.C.
22. Ralston S. Alexander, Q.C., Chair, Joost Blom, Q.C., John Hunter, Q.C., Margaret Ostrowski, Q.C., Grant Taylor, Ross Tunnicliffe, Art Vertlieb, Q.C., James Vilvang, Q.C.
23. James D. Vilvang, Q.C., Single Bencher Panel
24. Anne K. Wallace, Q.A.C., Chair, Grant C. Taylor, G. Ronald Toews, Q.C.
25. Anne Wallace, Q.C., Chair, Grant Taylor, G. Ronald Toews, Q.C.
26. Ralston S. Alexander, Q.C., Chair, Allan McEachern, Life Bencher, Michael Falkins, Lay Bencher
27. John Hunter, Q.C., Chair, Gordon Turriff, Q.C., Art Vertlieb, Q.
28. John Hunter, QC, Chair, Gordon Turriff, QC, Art Vertlieb, QC
29. Robert W. McDiarmid, Q.C., Single Bencher Panel
30. G. Ronald Toews, Q.C., Anne Wallace, Q.C., Ralston S. Alexander, Q.C.
31. Grant C. Taylor, Single Bencher Panel Grant C. Taylor, Single Bencher Panel
32. Grant C. Taylor, Single Bencher Panel
33. William J. Sullivan, QC, Chair, John J.L. Hunter, QC, Margaret Ostrowski, QC
34. Grant C. Taylor, Single Bencher Panel
35. Gordon Turriff, Q.C., Single Bencher Panel

36. Margaret Ostrowski, Q.C., Chair, Carol Hickman, Art Vertlieb, Q.C.
37. Margaret Ostrowski, Q.C., Chair, Carol Hickman, Art Vertlieb, Q.C.
38. Patricia L. Schmit, Q.C., Chair, John J.L. Hunter, Q.C., Gavin H.G. Hume, Q.C.
39. Patricia Schmit, Q.C., Chair, John Hunter, Q.C., Gavin Hume, Q.C.
40. Gordon Turriff, Q.C., Single Benchers Panel
41. Margaret Ostrowski, Q.C., Single Benchers Panel
42. Ralston S. Alexander, QC, Chair, Gordon Turriff, QC, Dirk Sigalet, QC
43. Glen Ridgway, Q.C., Single Benchers Panel
44. William M. Everett, Q.C., Single Benchers Panel
45. G. Glen Ridgway, Q.C., Single Benchers Panel
46. David Zacks, Q.C., Single Benchers Panel
47. Ralston S. Alexander, QC, Chair, Gordon Turriff, QC, Joost Blom, QC

1.

David Michael Ashton | *Decision on Facts and Verdict*

2004 LSBC 11 Report issued : May 4 , 2004 Oral Reasons : March 16 , 2004 Citation issued : September 23 , 2003 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning DAVID MICHAEL ASHTON Respondent Decision of the Hearing Panel on Fa... [Read full decision](#)
Panel: Ralston S. Alexander, Q.C., Single Benchers Panel

2.

David Michael Ashton | *Decision on Penalty*

2004 LSBC 12 Report issued : May 4 , 2004 Citation issued : September 23 , 2003 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning DAVID MICHAEL ASHTON Respondent Decision of the Hearing Panel on Penalty Hearing date : March 16 , ... [Read full decision](#)
Panel: Ralston S. Alexander, Q.C., Single Benchers Panel

3.

Raymond William Barton | *Decision of the Hearing Panel*

2004 LSBC 20 Report issued : June 18 , 2004 Oral Reasons : June 15 , 2004 Citation issued : November 25 , 2003 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning RAYMOND WILLIAM BARTON Respondent Decision of the Hearing Panel Hea... [Read full decision](#)
Panel: David Zacks, Q.C., Single Benchers Panel

4.

Raghbir Singh Basi | *Decision of the Benchers*

2004 LSBC 30 Report issued : September 14 , 2004 Oral Reasons : September 8 , 2004 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a proceeding pursuant to s . 39 concerning Raghbir Singh Basi Respondent Decision of the Benchers Hearing date : Sep... [Read full decision](#)

Panel: Ralston S. Alexander, QC, Chair, Gavin Hume, QC, Terence La Liberte, QC

5.

[Raghbir Singh Basi](#) | *Decision on Fact and verdict*

2004 LSBC 35 Report issued : September 27 , 2004 Citation issued : May 26 , 2003 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning RAGHBIR SINGH BASI Respondent Decision of the Hearing Panel on Facts and Verdict Hearing date : S... [Read full decision](#)

Panel: G. Glen Ridgway, Q.C., Chair, Ross D. Tunnicliffe, Gordon Turriff, Q.C.

6.

[Raghbir Singh Basi](#) | *Decision of the Benchers*

2004 LSBC 39 Report issued : October 7 , 2004 Oral Reasons : October 1 , 2004 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a proceeding pursuant to s . 39 concerning Raghbir Singh Basi Respondent Decision of the Benchers Hearing date : October 1... [Read full decision](#)

Panel: Ralston S. Alexander, QC, Chair, Gavin Hume, QC, Terence La Liberte, QC

7.

[Philip Richard Derksen](#) | *Decision on Facts and verdict*

2004 LSBC 08 Report issued : April 26 , 2004 Oral Reasons : April 14 , 2004 Citation issued : January 12 , 2004 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning PHILIP RICHARD DERKSEN Respondent Decision of the Hearing Panel on... [Read full decision](#)

Panel: Grant C. Taylor, Single Benchers Panel

8.

[Philip Richard Derksen](#) | *Decision on Penalty*

2004 LSBC 08 Report issued : April 26 , 2004 Citation issued : January 12 , 2004 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning PHILIP RICHARD DERKSEN Respondent Decision of the Hearing Panel on Penalty Hearing date : April 1... [Read full decision](#)

Panel: Grant C. Taylor, Single Benchers Panel

9.

[Daniel Bruce Geller](#) | *Decision of the Hearing Panel*

2004 LSBC 24 Report issued : July 13 , 2004 Oral reasons : June 23 , 2004 Citation issued : April 3 , 2003 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning DANIEL BRUCE GELLER Respondent Decision of the Hearing Panel Hearing date... [Read full decision](#)

Panel: Gordon Turriff, Q.C., Single Benchers Panel

10.

[Rudi Gellert](#) | *Decision on Facts and verdict*

2004 LSBC 28 Report issued : September 15 , 2004 Citation issued : January 12 , 2004 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning RUDI GELLERT Respondent Decision of the Hearing Panel on Facts and Verdict Hearing date : Aug... [Read full decision](#)
Panel: John Hunter, Q.C., Single Bench Panel

11.

[Danine Lorraine Geronazzo](#) | *Decision on Facts and verdict*

2004 LSBC 26 Report issued : August 12 , 2004 Citation issued : July 9 , 2002 Citation amended : February 12 , 2004 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Danine Lorraine Geronazzo Respondent Decision of the Hearing P... [Read full decision](#)
Panel: David Zacks, Q.C., Chair, Joost Blom, Q.C., Dirk Sigalet, Q.C

12.

[James Douglas Hall](#) | *Decision on Penalty*

2004 LSBC 01 Report issued : January 5 , 2004 Citation issued : June 19 , 2003 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning JAMES DOUGLAS HALL Respondent Decision of the Hearing Panel on Penalty Hearing date : December 13 ,... [Read full decision](#)
Panel: G. Ronald Toews, Q.C., Chair, Patricia Schmit, Q.C., G. Glen Ridgway, Q.C

13.

[James Douglas Hall](#) | *Decision on Facts and verdict*

2004 LSBC 34 Report issued : September 24 , 2004 Citation issued : April 21 , 2004 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning JAMES DOUGLAS HALL Respondent Decision of the Hearing Panel on Facts and Verdict Hearing date :... [Read full decision](#)
Panel: G. Glen Ridgway, Q.C., Chair, Robert Gourlay, Q.C., Bruce LeRose

14.

[James Douglas Hall](#) | *Decision on Penalty*

2004 LSBC 41 Report issued : November 3 , 2004 Oral Reasons : October 29 , 2004 Citation issued : April 21 , 2004 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning JAMES DOUGLAS HALL Respondent Decision of the Hearing Panel on P... [Read full decision](#)
Panel: G. Glen Ridgway, Q.C., Chair, Robert Gourlay, Q.C., Bruce A. LeRose

15.

[Peter Wallace Hammond](#) | *Decision on Facts and verdict*

2004 LSBC 18 Report issued : June 2 , 2004 Citation issued : October 1 , 2003 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning PETER WALLACE HAMMOND Respondent Decision of the Hearing Panel on Facts and Verdict Hearing date : F... [Read full decision](#)

Panel: Ralston S. Alexander, Q.C., Chair, Margaret Ostrowski, Q.C., June Preston

16.

Peter Wallace Hammond | *Corrigenda*

2004 LSBC 21 Corrigenda issued : June 16 , 2004 Report issued : June 2 , 2004 Citation issued : October 1 , 2003 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning PETER WALLACE HAMMOND Respondent Corrigenda Panel : Ralston S . A... [Read full decision](#)

Panel: Ralston S. Alexander, Q.C., Chair, Margaret Ostrowski, Q.C., June Preston

17.

Peter Wallace Hammond | *Decision on Penalty*

2004 LSBC 32 Report issued : September 21 , 2004 Oral Reasons : August 30 , 2004 Citation issued : October 1 , 2003 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning PETER WALLACE HAMMOND Respondent Decision of the Hearing Panel... [Read full decision](#)

Panel: Ralston S. Alexander, Q.C., Chair, Margaret Ostrowski, Q.C., June Preston (Lay Bencher)

18.

Peter Wallace Hammond | *Decision on Penalty*

2004 LSBC 33 Report issued : September 23 , 2004 Citation issued : December 18 , 2002 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning PETER WALLACE HAMMOND Respondent Decision of the Hearing Panel on Penalty Hearing date : Aug... [Read full decision](#)

Panel: Patricia L. Schmit, Q.C., Single Bencher Panel

19.

James Lindsay Harris | *Decision of the Hearing Panel*

2004 LSBC 38 Report issued : October 6 , 2004 Oral Reasons : October 5 , 2004 Citation issued : January 23 , 2004 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning JAMES LINDSAY HARRIS Respondent Decision of the Hearing Panel He... [Read full decision](#)

Panel: Patricia Schmit, Q.C., Single Bencher 20.

Timothy John Hordal | *Decision on Facts and verdict*

2004 LSBC 22 Report issued : July 7 , 2004 Oral reasons : June 17 , 2004 Citation issued : February 12 , 2003 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning TIMOTHY JOHN HORDAL Respondent Decision of the Hearing Panel on Fact... [Read full decision](#)

Panel: Patricia Schmit, Q.C., Chair, Gavin Hume, Q.C., Terence La Liberte, Q.C.

21.

[Timothy John Hordal](#) | *Decision on Penalty*

2004 LSBC 23 Report issued : July 7 , 2004 Oral reasons : June 17 , 2004 Citation issued : February 12 , 2003 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning TIMOTHY JOHN HORDAL Respondent Decision of the Hearing Panel on Pena... [Read full decision](#)

Panel: Patricia Schmit, Q.C., Chair, Gavin Hume, Q.C., Terence La Liberte, Q.C.

22.

[Timothy John Hordal](#) | *Bencher Review decision*

2004 LSBC 36 Report issued : September 30 , 2004 Citation issued : February 12 , 2003 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a section 47 review concerning TIMOTHY JOHN HORDAL Respondent Decision of the Benchers on Review Review date : Au... [Read full decision](#)

Ralston S. Alexander, Q.C., Chair, Joost Blom, Q.C., John Hunter, Q.C., Margaret Ostrowski, Q.C., Grant Taylor, Ross Tunnicliffe, Art Vertlieb, Q.C., James Vilvang, Q.C.

23.

[Alexander Jeletzky](#) | *Decision on Facts and verdict*

2004 LSBC 17 Report issued : May 19 , 2004 Citation issued : February 20 , 2003 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning ALEXANDER JELETZKY Respondent Decision of the Hearing Panel on Facts and Verdict Hearing date : Ap... [Read full decision](#)

Panel: James D. Vilvang, Q.C., Single Bencher Panel

24.

[Martin David Jones](#) | *Decision on Facts and verdict*

2004 LSBC 10 Report issued : May 10 , 2004 Citation issued : August 18 , 2003 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning MARTIN DAVID JONES Respondent Decision of the Hearing Panel on Facts and Verdict Hearing date : Febr... [Read full decision](#)

Panel: Anne K. Wallace, Q.A.C., Chair, Grant C. Taylor, G. Ronald Toews, Q.C

25.

[Martin David Jones](#) | *Decision on Penalty*

2004 LSBC 37 Report issued : October 5 , 2004 Citation issued : August 18 , 2003 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning MARTIN DAVID JONES Respondent Decision of the Hearing Panel on Penalty Hearing date : August 31 , ... [Read full decision](#)

Panel: Anne Wallace, Q.C., Chair, Grant Taylor, G. Ronald Toews, Q.C.

26.

Re Lawyer 1 | *Decision of the Hearing Panel*

2004 LSBC 04 Report issued : March 25 , 2004 Citation issued : May 28 , 2002 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Re : Lawyer 1 Respondent Decision of the Hearing Panel Hearing date : January 7 , 2004 Panel : Ralsto... [Read full decision](#)

Ralston S. Alexander, Q.C., Chair, Allan McEachern, Life Bencher, Michael Falkins, Lay Bencher

27.

Re Lawyer 2 | *Decision of the Hearing Panel (Citation dismissed)*

2004 LSBC 09 Report issued : April 30 , 2004 Citation issued : January 23 , 2003 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Re : Lawyer 2 Respondent Decision of the Hearing Panel Hearing date : January 8 , 2004 Panel : Jo... [Read full decision](#)

John Hunter, Q.C., Chair, Gordon Turriff, Q.C., Art Vertlieb, Q.C

28.

Re: Lawyer 2 | *Corrigenda*

2004 LSBC 42 Corrigenda issued : May 4 , 2004 Report issued : April 30 , 2004 Citation issued : January 23 , 2003 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Re : Lawyer 2 Respondent Corrigenda Panel : John Hunter , QC , C... [Read full decision](#)

Panel: John Hunter, QC, Chair, Gordon Turriff, QC, Art Vertlieb, QC

29.

Re Lawyer 3 | *Decision of the Hearing Panel*

2004 LSBC 27 Report issued : August 23 , 2004 Oral reasons : August 4 , 2004 Citation issued : April 28 , 2004 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning Re : Lawyer 3 Respondent Decision of the Hearing Panel Hearing date... [Read full decision](#)

Robert W. McDiarmid, Q.C., Single Bencher Panel

30.

Brian Maurice Legge | *Decision on Penalty*

2004 LSBC 02 Report issued : February 6 , 2004 Citations issued : June 20 , 2003 and August 18 , 2003 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning BRIAN MAURICE LEGGE Respondent Decision of the Hearing Panel on Penalty Hear... [Read full decision](#)

Panel: G. Ronald Toews, Q.C., Anne Wallace, Q.C., Ralston S. Alexander, Q.C

31.

Brian Maurice Legge | *Decision on Facts and verdict*

2004 LSBC 06 Report issued : March 23 , 2004 Oral Reasons : March 16 , 2004 Citation issued : November 25 , 2003 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning BRIAN MAURICE LEGGE Respondent Decision of the Hearing Panel on F... [Read full decision](#)

Grant C. Taylor, Single Bench Panel Grant C. Taylor, Single Bench Panel

32.

Brian Maurice Legge | *Decision on Penalty*

2004 LSBC 07 Report issued : March 23 , 2004 Citation issued : November 25 , 2003 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning BRIAN MAURICE LEGGE Respondent Decision of the Hearing Panel on Penalty Hearing date : March 16... [Read full decision](#)

Grant C. Taylor, Single Bench Panel

33.

William Frederick McGuire | *Decision of Three Benchers*

2004 LSBC 02A Report issued : January 8 , 2004 Oral Reasons : December 19 , 2003 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a s . 39 proceeding concerning William Frederick McGuire Respondent Decision of Three Benchers Hearing date : December... [Read full decision](#)

William J. Sullivan, QC, Chair, John J.L. Hunter, QC, Margaret Ostrowski, QC

34.

Malcolm Grant McMicken | *Decision of the Hearing Panel*

2004 LSBC 16 Report issued : May 26 , 2004 Oral Reasons : April 5 , 2004 Citation issued : January 13 , 2004 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning MALCOLM GRANT MCMICKEN Respondent Decision of the Hearing Panel Heari... [Read full decision](#)

Grant C. Taylor, Single Bench Panel

35.

Brian William Medd | *Decision of the Hearing Panel*

2004 LSBC 15 Report issued : May 12 , 2004 Oral reasons : April 6 , 2004 Citation issued : October 14 , 2003 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning BRIAN WILLIAM MEDD Respondent Decision of the Hearing Panel Hearing d... [Read full decision](#)

Gordon Turriff, Q.C., Single Bench Panel 36.

[Robert Gordon Milne](#) | *Decision on Penalty*

2004 LSBC 19 Report issued : June 16 , 2004 Oral reasons : May 20 , 2004 Citation issued : February 11 , 2004 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning ROBERT GORDON MILNE Respondent Decision of the Hearing Panel on Pena... [Read full decision](#)

Margaret Ostrowski, Q.C., Chair, Carol Hickman, Art Vertlieb, Q.C.

37.

[Robert Gordon Milne](#) | *Decision on Facts and verdict*

2004 LSBC 19 Report issued : June 16 , 2004 Oral Reasons : May 20 , 2004 Citation issued : February 11 , 2004 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning ROBERT GORDON MILNE Respondent Decision of the Hearing Panel on Fact... [Read full decision](#)

Margaret Ostrowski, Q.C., Chair, Carol Hickman, Art Vertlieb, Q.C.

38.

[Marlyne Joy O Dwyer](#) | *Decision on Facts and verdict*

2004 LSBC 03 Report issued : February 16 , 2004 Citations issued : October 28 , 2003 and December 18 , 2003 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning MARLYNE JOY O'DWYER Respondent Decision of the Hearing Panel on Facts... [Read full decision](#)

Patricia L. Schmit, Q.C., Chair, John J.L. Hunter, Q.C., Gavin H.G. Hume, Q.C.

39.

[Marlyne Joy O Dwyer](#) | *Decision on Penalty*

2004 LSBC 13 Report issued : June 9 , 2004 Citations issued : October 28 , 2003 and December 18 , 2003 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning MARLYNE JOY O'DWYER Respondent Decision of the Hearing Panel on Penalty Hea... [Read full decision](#)

Patricia Schmit, Q.C., Chair, John Hunter, Q.C., Gavin Hume, Q.C.

40.

[Robert John Palkowski](#) | *Decision of the Hearing Panel*

2004 LSBC 31 Report issued : September 21 , 2004 Oral Reasons : July 15 , 2004 Citation issued : June 25 , 2003 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning ROBERT JOHN PALKOWSKI Respondent Decision of the Hearing Panel Hea... [Read full decision](#)
Gordon Turriff, Q.C., Single Bench Panel

41.

Keith Woodburn Purvin-Good | *Decision of the Hearing Panel*

2004 LSBC 05 Report issued : March 16 , 2004 Oral Reasons : February 23 , 2004 Citation issued : April 2 , 2003 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning KEITH WOODBURN PURVIN - GOOD Respondent Decision of the Hearing Pa... [Read full decision](#)
Margaret Ostrowski, Q.C., Single Benchers Panel

42.

Sanjeev Sani Rai | *Decision of Three Benchers*

2004 LSBC 43 Report issued : December 20 , 2004 Oral Reasons : November 25 , 2004 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a s . 39 proceeding concerning Sanjeev Rai Respondent Decision of Three Benchers Hearing date : November 25 , 2004 Pa... [Read full decision](#)

Ralston S. Alexander, QC, Chair, Gordon Turriff, QC, Dirk Sigalet, QC 43.

Keyvan Shojania | *Decision of the Hearing Panel*

2004 LSBC 25 Report issued : August 16 , 2004 Oral Reasons : July 13 , 2004 Citation issued : February 3 , 2004 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning KEYVAN SHOJANIA Respondent Decision of the Hearing Panel Hearing d... [Read full decision](#)
Glen Ridgway, Q.C., Single Benchers Panel

44.

David Jacob Siebenga | *Decision of the Hearing Panel*

2004 LSBC 40 Report issued : October 8 , 2004 Oral reasons : October 8 , 2004 Citation issued : January 27 , 2004 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning DAVID JACOB SIEBENGA Respondent Decision of the Hearing Panel He... [Read full decision](#)
William M. Everett, Q.C., Single Benchers Panel

45.

Howard Marcel Smith | *Decision of the Hearing Panel*

2004 LSBC 14 Report issued : May 7 , 2004 Oral Reasons : May 6 , 2004 Citation issued : November 14 , 2002 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning HOWARD MARCEL SMITH Respondent Decision of the Hearing Panel Hearing da... [Read full decision](#)
G. Glen Ridgway, Q.C., Single Benchers Panel

46.

Gregory Allan Smith | *Decision of the Hearing Panel*

2004 LSBC 29 Report issued : August 27 , 2004 Oral reasons : August 24 , 2004 Citation issued : February 5 , 2004 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning GREGORY ALLAN SMITH Respondent Decision of the Hearing Panel Hea... [Read full decision](#)

David Zacks, Q.C., Single Benchers Panel

47.

[Robert Earl Williamson](#) | *Decision of Three Benchers*

2004 LSBC 42 Report issued : December 16 , 2004 Oral Reasons : November 22 , 2004 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a proceeding pursuant to s . 39 concerning Robert Earl Williamson Respondent Decision of Three Benchers Hearing date... [Read full decision](#)

Ralston S. Alexander, QC, Chair, Gordon Turriff, QC, Joost Blom, QC

2003- Discipline Decisions

2003 LSBC Discipline Committee

Benchers:

1. W.M. Everett, QC (Chair, Jan-Oct),
2. A.K. Fung, QC (Chair, OctDec),
3. I. Donaldson, QC,
4. D.W. Gibbons, QC,
5. William Jackson,
6. P.J. Keighley, QC,
7. R.W. McDiarmid, QC,
8. P. Nagle,
9. L. To,
10. A.K. Wallace, QC,
11. J.S. Shackell, QC (Life Benchers)

Non-Benchers:

12. Rita Andreone,
13. Jo Ann Carmichael, QC,
14. Victor O'Connor,
15. Diane Turner

Staff: J. Whittow, QC, H. Caldwell, M. Currie, J. Dent, T. Follett, J. Gossen, K. Gounden, L. Hlus, T. Holmes, K. Kim, R. Long, P. Martinuk, G. Myers, E. van Eck

Conflicts of Interest - 2003 (2)

1. William Jackson - [James Neil Rodgers](#) - 2005 LSBC 08
2. Peter J. Keighley, QC - [Raymond William Barton](#) - [2003] LSBC 38
3. Anne Wallace - [Brian Maurice Legge](#) - 2003 LSBC 42

2003

David Michael Ashton | *Decision on Penalty*

[2003] LSBC 23 Report issued : November 4 , 2003 Citations issued : December 19 , 2002 and February 12 , 2003 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning DAVID MICHAEL ASHTON Respondent Decision of the Hearing Panel on P... [Read full decision](#)
G. Ronald Toews, Q.C., Chair, Dr. Maelor Vallance, Gerald J. Kambeitz, Q.C

2.

Raymond William Barton | *Decision of the Benchers*

[2003] LSBC 38 Report issued : October 29 , 2003 Oral Reasons : October 10 , 2003 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a s . 38 referral concerning Raymond William Barton Respondent Decision of the Benchers Hearing date : October 10 ,... [Read full decision](#)
Peter J. Keighley, QC, Chair, Ralston S. Alexander, QC, Grant C. Taylor

3.

John Allan Davies | *Decision on Facts and verdict*

[2003] LSBC 41 Report issued : November 14 , 2003 Oral Reasons : October 28 , 2003 Citation issued : July 14 , 2003 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning JOHN ALLAN DAVIES Respondent Decision of the Hearing Panel... [Read full decision](#)

Russell S. Tretiak, Q.C., Single Benchers

4.

John Allan Davies | *Decision on Penalty*

[2003] LSBC 41 Report issued : November 14 , 2003 Oral Reasons : October 28 , 2003 Citation issued : July 14 , 2003 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning JOHN ALLAN DAVIES Respondent Decision of the Hearing Panel o... [Read full decision](#)
Russell S. Tretiak, Q.C., Single Benchers

5.

Rudi Gellert | *Decision on Facts and verdict*

2003] LSBC 32 Report issued : September 5 , 2003 Oral reasons : June 18 , 2003 Citations issued : May 8 , 2002 October 2 , 2002 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning RUDI GELLERT Respondent Decision of the Hearing P... [Read full decision](#)
Panel: G. Ronald Toews, Q.C., Chair, Gordon Turriff, Q.C. Michael Falkins

6.

Rudi Gellert | *Decision on Facts and verdict*

[2003] LSBC 38 Report issued : October 24 , 2003 Oral reasons : October 14 , 2003 Citation issued : June 20 , 2003 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning RUDI GELLERT Respondent Decision of the Hearing Panel on Fact... [Read full decision](#)
Panel: Russell S. Tretiak, Q.C., Single Bench

7.

Glenford Emerson Greene | *Decision on Penalty*

2003] LSBC 30 Report issued : November 27 , 2003 Citation issued : February 12 , 2003 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning GLENFORD EMERSON GREENE Respondent Decision of the Hearing Panel on Penalty Hearing date :... [Read full decision](#)
Panel : G. Ronald Toews, Q.C., Chair, Patricia Schmit, Q.C., G. Glen Ridgway, Q.C.

8.

James Douglas Hall | *Decision on Facts and verdict*

[2003] LSBC 34 Report issued : September 30 , 2003 Oral reasons : September 25 , 2003 Citation issued : June 19 , 2003 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning JAMES DOUGLAS HALL Respondent Decision of the Hearing Pan... [Read full decision](#)

Panel : G. Ronald Toews, Q.C., Chair, Patricia Schmit, Q.C., G. Glen Ridgway, Q.C.

9.

Peter Wallace Hammond | *Decision on Facts and verdict*

[2003] LSBC 36 Report issued : October 16 , 2003 Citation issued : December 18 , 2002 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning PETER WALLACE HAMMOND Respondent Decision of the Hearing Panel on Facts and Verdict Hearin... [Read full decision](#)

Panel: Patricia L. Schmit, Q.C., Single Bench

10.

Brian Maurice Legge | *Decision on Facts and verdict*

2003 LSBC 42 Report issued : November 26 , 2003 Citations issued : June 20 , 2003 and August 18 , 2003 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning BRIAN MAURICE LEGGE Respondent Decision of the Hearing Panel on Facts and V... [Read full decision](#)

Panel: G. Ronald Toews, Q.C., Chair, Anne Wallace, Ralston S. Alexander, Q.C.

11.

Alan Marsden | *Decision of the Hearing Panel*

2003 LSBC 47 Report issued : December 30 , 2003 Oral Reasons : December 15 , 2003 Citation issued : July 23 , 2003 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning ALAN MARSDEN Respondent Decision of the Hearing Panel Hearing d... [Read full decision](#)

Robert W. Gourlay, Q.C., Single Bench

12.

Henry Alexander McCandless | *Decision of the Hearing Panel*

2003 LSBC 44 Report issued : December 17 , 2003 Oral Reasons : December 2 , 2003 Citation issued : June 16 , 2003 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning H.A . (SANDY) MCCANDLESS Respondent Decision of the Hearing Pa... [Read full decision](#)
Gordon Turriff, Q.C., Single Bench

13.

Donald Douglas McLellan | *Decision of the Hearing Panel*

2003 LSBC 40 Report issued : November 12 , 2003 Oral Reasons : October 29 , 2003 Citation issued : December 10 , 2002 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning DONALD DOUGLAS MCLELLAN Respondent Decision of the Hearing P... [Read full decision](#)
Margaret Ostrowski, Q.C., Single Bench

14.

John Walter Motiuk | *Decision of the Hearing Panel*

2003 LSBC 33 Report issued : September 25 , 2003 Oral reasons : August 29 , 2003 Citations issued : April 29 , 1999 ; August 30 , 2000 THE LAW SOCIETY OF BRITISH COLUMBIA In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning JOHN MOTIUK Respondent Decision of the Hear... [Read full decision](#)
Panel: Robert Gourlay, Q.C., Chair, Margaret Ostrowski, Q.C., Grant Taylor

15.

James Neil Rodgers | *Decision on Facts and verdict*

2005 LSBC 08 Report issued : February 22 , 2005 Oral Reasons : February 15 , 2005 Citation issued : December 5 , 2003 The Law Society of British Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning JAMES NEIL RODGERS Respondent Decision of the Hearing Panel... [Read full decision](#)
Panel: David Zacks, Q.C., Chair, William Jackson, Terence La Liberte, Q.C.

16.

Milan Matt Uzelac | *Decision on Penalty*

[2003] LSBC 35 Report issued : November 4 , 2003 Citations issued : July 12 , 2003 , February 4 , 2003 and February 4 , 2003 The Law Society of British Columbia In the matter of the Legal

Profession Act , SBC 1998 , c . 9 and a hearing concerning Milan Matt Uzelac Respondent
Decision of the Hearin... [Read full decision](#)
Panel: Patricia Schmit, QC, Chair, James Vilvang, QC, Gerald Lecovin, QC

17.

[Milan Matt Uzelac](#) | *Decision on Facts and verdict*

2003 LSBC 35 Report issued : November 4 , 2003 Oral Reasons : September 17 , 2003 Citations
issued : July 12 , 2002 February 4 , 2003 and February 4 , 2003 The Law Society of British
Columbia In the matter of the Legal Profession Act , SBC 1998 , c . 9 and a hearing concerning
MILAN MATT UZELAC Resp... [Read full decision](#)

Panel: Patricia Schmit, Q.C., Chair, James Vilvang, Q.C. Gerald Lecovin, Q.C.

Prepared by Kevin A. McLean (B.A., J.D., CIM) based upon information on

<https://www.lawsociety.bc.ca/lcbc/apps/hearings/search.cfm> All

information was copied and pasted from said website.

This table only contains information regarding “Discipline Decisions” as denoted in the search
menu.

Appendix “F” : The Quantum of Rule 4-55 Orders from 2009 to 2018 present

June 22, 2018 letter from LSBC to Mr. McLean



Nathanson Schachter & Thompson LLP
Trials • Appeals • Advocacy

Karen L.M. Carteri
Murray A. Clemens, Q.C., FCI Arb*
Emily L. Hansen
R.J. Randall Hordo, Q.C., FCI Arb*
Julia E. Lawn
Julia K. Lockhart
Kevin D. Loo
James C. Macinnis
Irwin G. Nathanson, Q.C.*
M. Caitlin Ohama-Darcus
James P. Parker
Stephen R. Schachter, Q.C.*
Peter R. Senkpiel
Kristen E. Withers

Ardella A. Thompson (Ret.)

750 - 900 Howe Street
Vancouver, B.C. V6Z 2M4
www.nst.bc.ca

T: 604.662.8840
F: 604.684.1598

File: 10009-39
Reply to: Julia K. Lockhart
Email: jlockhart@nst.bc.ca
Direct Line: 778-945-1481

22 June 2018

BY EMAIL

PO Box 20510 Howe Street
Vancouver, BC
V6Z 2N8

Attention: Kevin McLean

Dear Mr. McLean:

Re: Rule 4-55 (formerly 4-43) Orders

You have requested information on the number of orders issued under Law Society Rule 4-55 (formerly Rule 4-43) from 2009 to 2018. Based on the Law Society's electronic records, the number of orders granted is as follows:

2009	6 orders
2010	6 orders
2011	2 orders
2012	2 orders
2013	4 orders
2014	5 orders
2015	2 orders
2016	4 orders
2017	4 orders
2018 (to June 21)	3 orders



In view of the information that has been provided to you, I confirm that you will not be proceeding to seek any relief against the Law Society under your application presently set for July 6, 2018.

Yours truly,

Nathanson, Schachter & Thompson LLP

Per:

A handwritten signature in black ink, appearing to be "J. L. Schachter", written over a horizontal line.

JKL:mc

cc: clients
Sarah Bevan

Appendix “G” Re: All 4-55 Orders were granted (none refused) and absence evidence under oath

June 26, 2018 Letter from LSBC



Nathanson Schachter & Thompson LLP
Trials • Appeals • Advocacy

Karen L.M. Carteri
Murray A. Clemens, Q.C., FCI Arb*
Emily L. Hansen
R.J. Randall Hordo, Q.C., FCI Arb*
Julia E. Lawn
Julia K. Lockhart
Kevin D. Loo
James C. MacInnis
Irwin G. Nathanson, Q.C.*
M. Caitlin Ohama-Darcus
James P. Parker
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File: 10009-39
Reply to: Julia K. Lockhart
Email: jlockhart@nst.bc.ca
Direct Line: 778-945-1481

Ardella A. Thompson (Ret.)

26 June 2018

VIA EMAIL

PO Box 20510 Howe Street
Vancouver, BC
V6Z 2N8

Attention: Kevin McLean

Dear Mr. McLean:

Re: Request for Records

I am in receipt of your email of June 25 at 11:34 am and your email today at 6:11 am requesting further records from the Law Society concerning orders made under Rule 4-55. As I explained in my earlier email, all requests for records will be responded to in accordance with the timeframes specified under the *Freedom of Information and Protection of Privacy Act*. In general, the *Freedom of Information and Protection of Privacy Act* requires that requests be responded to within 30 days, though it also provides for extensions, if necessary. In view of those timelines, it is unnecessary for you to demand immediate responses to your requests.

Notwithstanding the above, I am advised that during the time period from 2009 to 2018, no requests for an order under Rule 4-55 (formerly Rule 4-43) were denied. All requests were made and orders granted in accordance with the Law Society Rules in effect at the relevant time, which do not require evidence be given under oath.



Nathanson Schachter & Thompson LLP

Page 2

Yours truly,

Nathanson, Schachter & Thompson LLP

Per:

A handwritten signature in dark ink, appearing to be "J. Schachter", followed by a long horizontal line extending to the right.

JKL:rar

cc: client

DUTY TO CORRECT THE COURT RECORD

Part III: Argument

Legal Principles

8. The law is well-settled.
9. Members of the LSBC are officers of the court. Officers of the court are charged with the following obligations:

An officer of the court has a duty, as part of their profession, to promote justice and the effective operation of the justice system

As officers of the court, they are required to promote **justice** and tell the truth.

LSBCDC Decisions

10. The requirement of lawyers when corresponding with the LSBC was first determined (based on written decisions and noted in the PCH) in Bowser where said LSBCDC found as a matter of law:

Clearly the justice system would fall into disrepute, and the regulation of the legal profession would be seriously compromised, if members did not have an **unequivocal obligation to take care to be truthful in all written** and oral representations to the courts **and the Law Society**

11. The cases have followed and further articulated the requirement of lawyers when making representations to the Court and the LSBC; whether in oral or written form.
12. For ease of reference, the seminal cases, which is non-exhaustive are as follows:

Law Society of BC v. Vlug, [2014 LSBC 9 \(CanLII\)](#);

Law Society of BC v. Botting, 2000 LSBC 30;

Law Society of BC v. Lowther, [2002] LSBC 5;

Law Society of BC v. MacKinnon, [2002] LSDD No. 11;

Law Society of BC v. Karlsson, [2009 LSBC 3 \(CanLII\)](#);

Law Society of BC v. Nejat, 2014 LSBC 51; and

Mckinley (Re), 2019 LSBC 20

13. The comprehensive and legal principles from the reported cases when making submissions to the Court or the LSBC is as follows:

Requirement at First Instance

- d. Lawyers are officers of the court and **must** discharge their duties as officers of the court;
 - e. Upholding the duty to the court is one of the most three (3) most serious responsibilities;
 - f. The LSBC is not required to find intentional misconduct, misleading or misrepresentation. Rather, the LSBC (Discipline Panels) find professional misconduct for any of the following reasons:
 - i. The Law Society **must** demand that lawyers are forthright and honest in **all** their dealings (not just some or those that they may subjectively consider relevant or material). If a lawyer is not honest in **all** of their dealings with the Court, then professional misconduct will be found;
 - ii. Court **must** be able to accept statements of counsel without having to make further inquiry;
 - iii. There is no room for the following:
 - iv. a cavalier attitude;
 - v. sloppy practice; or
 - vi. dishonesty;
 - vii. The lawyer's submission **must** reflect the actuality. Any departure is an assault on the integrity of that system and will result in a finding of professional misconduct;
 - viii. The Lawyer has an unequivocal obligation to take care to be truthful in **all** written and oral representations to the Courts (and the Law Society). If she does not take care to be truthful, then it is professional misconduct;
 - ix. A lawyer **cannot** rely on her own carelessness or negligence to the benefit of herself and/or the client. If she does, then it is professional misconduct;
 - x. A lawyer **cannot** display a casual disregard for the truth. If she does, then this amounts to a professional misconduct; and
 - xi. A lawyer **must** have sufficient information to be able to assert the facts submitted orally or in writing. If not, then it is professional misconduct; and/or
 - xii. If a lawyer **fails** to take the necessary degree of care to verify that her statements were accurate, then it is professional misconduct.
14. It is trite that when a lawyer has not discharged his or her obligation to take care that all of his or her statmenets were truthful to the LSBC or Court, he or she has an obligation to correct it or them without delay.

15. Botting is binding upon the LSBC with respect to the conduct of Ms. Bevan.
16. Vlug cited Botting. In *Law Society of BC v. Botting*, 2000 LSBC 30, the citation before the hearing panel alleged misrepresentations to the court and to the Law Society. The panel held at paragraph 60:

While there is no specific prohibition in the Canons or the *Handbook* this Hearing Panel has no doubt that a lawyer has an obligation not to make misrepresentations to the court or the Law Society. Clearly, the justice system would fall into dispute and the ability to properly regulate the members of the profession would be seriously compromised if members did not have an unequivocal obligation to take care to be truthful in all written and oral representations to the Courts and the Law Society.
17. In Botting, the hearing panel found that Mr. Botting, in making misrepresentations to the court and to the Law Society, was negligent and reckless and displayed a casual disregard for the truth. The hearing panel found that his conduct constituted professional misconduct and ordered that he be suspended for 90 days.

Assessing the Truth of One's Statements

18. The law is well-settled in this area and the same factors are looked to by the LSBC as the courts such as inconsistency of statements; inconsistency of past and subsequent conduct;
19. The distinction between credibility and reliability was summarised by Watt J.A. in *R. v. H.C.*, 2009 ONCA 56, at para. [41](#):

Credibility and reliability are different. Credibility has to do with a witness's veracity, reliability with the accuracy of the witness's testimony. Accuracy engages consideration of the witness's ability to accurately

i. observe; ii.

recall; and

iii. recount

events in issue. Any witness whose evidence on an issue is not credible cannot give reliable evidence on the same point. Credibility, on the other hand, is not a proxy for reliability: a credible witness may give unreliable evidence: *R. v. Morrissey* (1995), [1995 CanLII 3498 \(ONCA\)](#), 22 O.R. (3d) 514, at 526 (C.A.).

