

THOMAS PAUL HARDING

Surrey, BC

Called to the bar: August 31, 1990

Citation issued June 18, 2013

Discipline hearing: April 29 to May 1, 2014

Panel: Cameron Ward, Chair, Dennis Day and Brian J. Wallace, QC

Decision issued: June 27, 2014 ([2014 LSBC 29](#))

Counsel: Robin McFee, QC for the Law Society; Gerald Cuttler for Thomas Paul Harding

FACTS

In June 2012, Harding agreed to assist his mother-in-law with a possible claim arising from a motor vehicle accident. Her vehicle was rendered inoperable and had been towed to a secure compound at a towing facility.

Harding went to the towing facility to take pictures of the damage to his mother-in-law's vehicle before it could be moved or altered. He was concerned that liability for the accident might be an issue, making the nature of the damage important.

Harding spoke to an employee of the towing facility through the small opening in a window that separates the public from the staff. He was advised that he could not take pictures and that only the registered owner was legally allowed to go into the yard.

Harding argued that he was the registered owner's lawyer and could go into the yard. After consulting a colleague, the employee advised Harding that he would need written permission from the owner to go look at her car.

Harding reluctantly left and went to his mother-in-law's residence to obtain a handwritten letter of authorization. He returned to the towing facility 45 minutes later.

An employee came to the window and advised that she would call her manager. Harding held the handwritten letter against the glass and said that if he didn't have an answer in less than 10 minutes he was going to call the police.

While waiting for the employee to return, Harding took photographs of the reception area and personnel through the window. Another employee told him that it was illegal to take pictures, but he continued to do so.

Harding then left the office and went to the parking area where he phoned the RCMP. He said that he needed "someone there to talk to these idiots because otherwise you'll have to send a police officer probably to arrest me because I'm going to go get a crowbar and smash up the place."

While the RCMP dispatcher was on the line, Harding moved his car in front of the gate to block access to the secure storage area and waited for the police to arrive.

As there were several security cameras at the towing facility, much of

what transpired during Harding's visit was recorded.

DETERMINATION

The panel had to determine whether, in the context of seeking to preserve evidence for a client, Harding violated the prohibition against dishonourable or questionable conduct that reflects badly on the integrity either of the lawyer or of the profession and, if so, whether the conduct is a marked departure from acceptable standards. The panel considered three issues: the crowbar comment, taking photographs and blocking the entrance to the storage area.

Harding's crowbar comment was made to an RCMP dispatcher to emphasize the volatility of the situation and to persuade her that police attendance was required. While the comment was apparently overheard by an employee, there was no evidence to suggest that Harding intended it to be taken as a threat.

Harding acknowledged making this remark in a moment of frustration, and he provided a written apology to the Law Society. The panel could not say that this statement, viewed in context of protecting a client's interest, represented a marked departure from the standard of conduct expected of lawyers.

The panel found that, in taking the photographs, Harding did not breach anyone's privacy. The towing facility is a public place under video surveillance.

While he was aggressive and rude, Harding claimed he had a duty to create a record to protect the interests of his client. The fact that the employees refused consent and that the towing facility asserted a policy prohibiting photographs does not make taking pictures a marked departure from the standard of conduct the Law Society expects of lawyers. The panel found that this act did not constitute professional misconduct.

Harding moved his car to block the entrance to the storage area to prevent the removal of his client's car. It was aggressive, but done out of the belief that it was necessary to protect his client's interest. The panel found that this action did not constitute professional misconduct.

DECISION

The panel dismissed the citation and the three allegations against Harding.

Citation issued December 3, 2013

Discipline hearing: May 14, 2014

Panel: Nancy Merrill, Chair, Robert Smith and John Waddell, QC

Decision issued: July 7, 2014 ([2014 LSBC 30](#))

Counsel: Kieron Grady for the Law Society; Gerald Cuttler for Thomas Paul Harding

FACTS

In January 2013, Thomas Paul Harding was retained by a client in a family law proceeding against her husband. The issues in the

proceeding included spousal and child support. The husband had been jailed twice for failing to comply with court orders, prior to Harding being retained by the wife.

On August 1, Harding and both opposing co-counsel attended court regarding Harding's Notice of Application dated July 24 seeking relief against his client's husband, which included jail for non-compliance with earlier orders. Neither Harding's client nor her husband was present. The judge heard counsel on an earlier Notice of Application; however, due to a lack of time, the judge advised he would not hear the July 24 application on that date.

Harding and the two opposing lawyers discussed the case outside the courtroom. According to the complainant, Harding said words to the effect that his client's husband should be jailed and that he might learn his lesson after he's been gang raped.

On the afternoon of August 1, Harding sent an email to opposing counsel about the case and the need to schedule court dates. Co-counsel did not respond to his email.

On August 8, Harding was advised that both opposing co-counsel intended to withdraw as counsel for his client's husband.

On August 14, one of the opposing lawyers complained to the Law Society about Harding's alleged comment.

DETERMINATION

There were two issues before the panel:

1. whether Harding made the alleged comment; and
2. if he did make the comment, did the comment constitute professional misconduct?

Harding was insistent that he did not make the comment.

At the time of the incident, the complainant had been a lawyer for less than two years and was 26 years of age. She had no previous dealings with Harding that would have resulted in animosity or bad feelings.

The complainant did not speak to her co-counsel about the alleged comment until a few days later when she was preparing her complaint. Her co-counsel advised that she had not heard the alleged comment. The panel found it odd that the complainant did not speak to her co-counsel about such an offensive comment immediately after they left the courthouse.

The complainant did not respond to Harding's email on August 1, either to advise that she and her co-counsel would be withdrawing from the case or to mention the alleged comment. By her silence, she missed an opportunity to confirm the alleged comment with Harding.

On April 11, 2014, Harding wrote a letter of apology to the complainant. The letter did not constitute an admission and was prepared in close proximity to the hearing. The panel had the impression that it was prepared for a strategic rather than a sincere purpose.

The panel concluded that it had not been established on a balance of probabilities that Harding made the alleged comment.

Given the panel's finding, it was not necessary to make a determination

on whether the alleged comment constituted professional misconduct. However, the panel noted that, while the alleged comment was offensive and ill-advised, there were a number of factors that would have prevented it from crossing the line to professional misconduct.

The alleged comment was not passed on to the complainant's client, and there was no evidence that Harding's intention, or the complainant's interpretation of the alleged comment, was to persuade or intimidate the complainant into advising her client to comply with the court orders. Further, if the alleged comment was made, it was made only once, outside the hearing of third parties, and in understandably frustrating circumstances. The alleged comment was found to be closer to mere rudeness or discourtesy than professional misconduct.

The panel dismissed the allegation that Harding's actions constituted professional misconduct.

DOUGLAS BERNARD CHIASSON

Squamish, BC

Called to the bar: May 18, 1990

Discipline hearing: May 22, 2014

Panel: Thomas Fellhauer, Chair, Don Amos and Jennifer Chow

Oral reasons: May 22, 2014

Decision issued: July 30, 2014 (2014 LSBC 32)

Counsel: Alison Kirby for the Law Society; Douglas Bernard Chiasson on his own behalf

FACTS

In March 2007, Douglas Bernard Chiasson was retained by a client in a personal injury matter related to a motor vehicle accident. Chiasson and his client entered into a written contingency fee agreement that provided that he would be paid, among other things, an amount equal to 25 per cent of any settlement money plus disbursements.

From March 2007 to May 2010, Chiasson corresponded with various medical practitioners on his client's behalf, contacted the Insurance Corporation of British Columbia (ICBC) regarding a settlement offer, met with his client; and filed and served a writ of summons and statement of claim.

Between May and October 2010, other than submitting further receipts to ICBC, Chiasson did nothing to advance his client's claim. Between October and December 2010, he corresponded with ICBC regarding his client's benefits.

In December 2010, Chiasson sent his client a letter enclosing a cheque from ICBC and updating her on requests to ICBC for reimbursement of medical expenses.

Between December 2010 and May 2012, despite being contacted by ICBC counsel requesting information about service of the writ and statement of claim, Chiasson did nothing to advance his client's claim. In particular, Chiasson failed to return telephone calls, failed to contact ICBC at his client's request, took no steps to advance the

claim and failed to provide progress updates to his client.

In May 2012, the client told Chiasson that he was fired. Chiasson continued to act on the client's behalf, but did not attempt to contact her between May and November 2012.

In June 2012, Chiasson's client made a complaint to the Law Society.

In November 2012, Chiasson contacted his client seeking instructions to settle her ICBC claim. ICBC offered to settle the claim for a sum plus taxable costs and disbursements.

In December 2012, Chiasson accepted ICBC's offer to settle on his client's behalf. He received a cheque from ICBC as settlement funds including costs and disbursements.

Chiasson then provided his client with a cheque and a bill for legal services. His bill was based on 25 per cent of the total settlement amount, including costs and disbursements. This was contrary to the written contingency fee agreement. Chiasson subsequently withdrew the amount of his bill from his pooled trust account in payment of the legal fees.

ADMISSIONS AND DISCIPLINARY ACTION

Chiasson admitted that his conduct constituted professional

misconduct when he failed to take any substantive steps to advance his client's claim, failed to provide his client with progress updates or answer reasonable requests for information, and continued to act on his client's behalf, without communicating with his client, after being told he was fired

Chiasson also admitted that, when he withdrew funds from his trust account to pay his fees, he ought to have known that he was not entitled to 25 per cent of the total amount recovered on his client's behalf. The contingency fee agreement did not entitle him to any percentage of costs and, if it did, the agreement would have been contrary to the *Legal Profession Act*. Chiasson admitted that his conduct amounted to professional misconduct.

In determining disciplinary action, the panel considered the absence of any directly relevant or recent disciplinary history and the fact that there was no dishonesty or deceitful conduct. The panel also noted that Chiasson was cooperative during the investigation and prosecution of this complaint.

The panel accepted Chiasson's admissions of professional misconduct and ordered that he pay:

1. a \$4,500 fine; and
2. \$1,000 in costs. ❖

Conduct reviews ... from page 17

Rules 5.1-6 and 7.2-11 of the *BC Code*. A conduct review subcommittee discussed ways that the lawyer could ensure that undertakings that were not immediately required to be fulfilled, as in the case of sales of matrimonial property, remained at the forefront of a lawyer's mind, such as placing prominent notes on the file. (CR 2014-08)

RUDENESS AND INCIVILITY

A lawyer sent correspondence to his brother and his brother's counsel containing rude and accusatory statements about his brother's counsel, contrary to Rule 2.1-4 of the *BC Code*. The lawyer also included materials from a Law Society complaint investigation in affidavits sworn and filed in court, contrary to Law Society Rule 3-3(1) and section 87 of the *Legal Profession Act*. A conduct review subcommittee recommended that the lawyer not permit staff to sign letters on his behalf that contained any substantive discussions. It also suggested that the lawyer wait 24 hours before sending any correspondence written in haste or anger, to allow time for careful reflection. The lawyer decided to retain counsel to deal with the family dispute in light of his personal emotional investment and its effect on his practice. (CR 2014-09)

BREACH OF CONFIDENTIALITY

A lawyer denied breaching her duty of confidentiality to her client when speaking with a social worker, claiming she was referring to the client's case in hypothetical terms. However, the lawyer took inadequate notes of the conversation. The lawyer now has a computerized file management software package to keep notes of all telephone conversations at the office. (CR 2014-10)

A lawyer attached confidential correspondence regarding a Law Society complaint investigation to an affidavit, contrary to Law Society Rule 3-3(1) and section 87 of the *Legal Profession Act*. These rules exist to protect the confidentiality of the Law Society's regulatory process. The improper use by the other party of the confidential documents did not absolve the lawyer of his own obligation to seek the consent of the executive director. (CR 2014-12)

BREACH OF NO-CASH RULE

A lawyer accepted an aggregate amount of cash in excess of \$7,500 on one client matter, contrary to Law Society Rule 3-5.1(3). The lawyer has taken steps to instruct staff about the no-cash rule, including the aggregate aspect of the rule. He is now using software to produce monthly printouts of cash deposits for each client. (CR 2014-11) ❖

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