

Peachland, B.C.

Called to the Bar: September 25, 1987

Ceased membership: January 1, 1997

Discipline hearing panel: November 18, 19, 20 and 21, 1997 and June 11, 1998

Gerald J. Lecovin, Chair, G. Ronald Toews and Gerald Kambeitz, Q.C.

Todd Follett, for the Law Society

JS, appearing on her own behalf (November 20, 1997); not appearing for the balance of the hearing

Discipline hearing report indexed as [1999] LSBC 18

Summary

For close to nine months, JS served as in-house counsel to an Indian Band. Shortly after leaving the position, she began acting for certain Band members in taking court proceedings against several members of the Band Council. A discipline hearing panel found that JS was in a conflict of interest and that her conduct constituted professional misconduct. The panel ordered that JS (then a former member) be reprimanded, appear before a board of examiners as a condition of reinstatement and pay costs of the hearing.

Facts

From April 5, 1993 to January 12, 1994, JS acted as in-house counsel for an Indian Band.

While employed by the Band, JS gave advice to the Chief and to Council members on various matters, took instructions from them and had access to various documents and information. One of these matters was with respect to certain lands (known as the GC lands), another was with respect to a utility company owned by the Band and another was with respect to self-government negotiations with the federal government.

In February, 1994, less than a month after ceasing her employment with the Band, JS was retained by one Band councillor and she gave him a legal opinion on the GC lands.

In March JS began acting for Band members L and D in filing a petition. L and D began the proceeding on their own behalf and as representatives of other members of the Band. In their petition, L and D sought an order for authority to bring an action on behalf of the utility company against the company's directors and officers alleging, among other things, breach of fiduciary duty and failure to act in the best interests of the company.

Three of the respondents to this petition were Band councillors and one was Chief at the time JS had been employed as in-house counsel to the Band.

In May, 1994 JS filed a writ in Supreme Court against the federal government for L and D, on their own behalf and on behalf of all resident members and non-residents of the Band. The plaintiffs sought an injunction preventing the government from proceeding further with community-based self-government negotiations with the Band.

Both the petition and the writ filed by JS concerned matters, and referred to information and facts, that would have come to JS in her capacity as in-house counsel to the Band.

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JS ceased membership in the Law Society on January 1, 1997 for non-payment of fees.

Decision

The hearing panel considered the provisions of Chapter 6, Rule 7 of the *Professional Conduct Handbook* respecting the restriction on a lawyer representing clients whose interests conflict with the interests of former clients.

The hearing panel rejected JS's position that she was retained by the Band (as opposed to the Band Council) and that she continued to act for the Band after ceasing her employment as in-house counsel. The panel said it was difficult, if not impossible, to distinguish between the Band and the Band Council as a client, given that the *Indian Act* gives the Band Council extensive powers to conduct the affairs of the Band and that the Council and Chief are the elected representatives.

Even if it were conceded that JS's client was the Band, this did not absolve her from a position of conflict. The courts have consistently adopted a broad definition of conflict of interest that extends beyond the strict solicitor-client relationship to situations where there is a sufficient relationship to infer that information was imparted in a confidential manner or in a situation where there may be an expectation of confidentiality.

The panel was satisfied that JS, when she was in-house counsel, acquired information from persons who, if not her clients, were persons involved or associated with her client. The panel was satisfied that JS would not have received all the information if it were known the information might be used against those persons.

The panel found that JS acted in a conflict of interest and that this conduct constituted professional misconduct.

Penalty

The hearing panel, after considering submissions from Law Society counsel and from JS, ordered that JS:

1. be reprimanded;
2. as a condition of a future reinstatement, appear before a board of examiners appointed by the Practice Standards Committee and satisfy the board that she is competent to practise law, with specific reference to her understanding of the obligations of a lawyer to avoid conflicts of interest; and
3. pay costs of the discipline proceedings.

In considering the issue of costs, the panel noted that this matter might have been resolved through a conduct review, but that JS, by maintaining a position that the panel found without merit, obliged the Law Society to conduct a lengthy hearing. JS chose not to attend part of this hearing.

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