

Victoria, BC

Called to the Bar: June 26, 1974

**Discipline hearing:** January 20, 2003

**Panel:** Gordon Turriff, QC, as a one-Bencher panel, by consent

**Report issued:** February 18, 2003; indexed as [2003] LSBC 08

**Counsel:** Todd R. Follett, for the Law Society; Robert T.C. Johnston, QC, for JB

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## Summary

JB represented a client who devised a scheme to borrow money from individuals. The scheme was fraudulent as the client planned to convert the funds for the benefit of people participating in the scheme and not to repay earlier loans as he had represented to the lenders. Although he did not intend to endorse the scheme, JB admitted to professional misconduct in recklessly making representations to lenders that they reasonably could have taken to mean that they could expect repayment of their loans. JB received a total of \$148,000 into his trust account from various people as loans to his client. On direction from the client, JB or his designate paid those funds out of trust to other persons. JB told the panel that he did not know his client's scheme was fraudulent at the time and he was duped by the client. He admitted, however, that his provision of services to the client, including his contact with lenders or potential lenders and receipt of their funds into trust for the client, assisted in the deception or betrayal of the public under the scheme, contrary to Chapter 1, Rule 5(4) of the *Professional Conduct Handbook*, and constituted professional misconduct. Under Rule 4-22, the Discipline Committee and discipline hearing panel accepted JB's admissions and his proposed penalty, and accordingly ordered that he be suspended for 12 months.

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## Facts

JB represented client F who devised a scheme to raise funds by borrowing money from individuals. F told potential lenders that he stood to inherit many millions of dollars. According to his story, the terms of the will allowed him to receive his inheritance only if he were shown to be responsible in his personal affairs. He said the executor of the estate interpreted this condition as meaning that F must be debt-free. As the executor was aware that F had certain loans, F wished to repay those loans by raising funds by way of other loans. In this way, he could appear debt-free, receive his inheritance and then pay off the new loans.

F offered potential lenders very high rates of return; in one instance, for example, he offered a 100% return on a short-term loan.

F's scheme was fraudulent; he planned to convert the funds raised for use of persons benefiting from his scheme and not to repay earlier loans as he had told the lenders.

JB received \$98,000 from one lender, Mr. B, between late 1997 and early 1998 and \$32,000 from another lender, Mr. C, in early 1998. As part of his services to F in relation to these loans, JB met with three lenders, including Mr. B and Mr. C, to discuss the F scheme. JB told the hearing panel that, although he did not intend to endorse the F scheme, he made certain representations to the lenders that they could reasonably have taken to mean that they could expect repayment of their loans. JB admitted that he made these representations recklessly.

JB received a total of \$148,000 into his trust account from various people as loans to his client. On direction from F, JB or his designate paid those funds out of trust to other persons. JB did not receive or benefit from any of the funds himself. He told the discipline hearing panel that he was duped by his client and did not know at the time that F's scheme was fraudulent. He admitted that he ought to have known that the scheme was a deception or betrayal of the public.

### **Admissions and penalty**

JB admitted that his provision of services to F, including his contact with lenders or potential lenders and receipt of their funds into trust for F, assisted in the deception or betrayal of the public under F's scheme, contrary to Chapter 1, Rule 5(4) of the *Professional Conduct Handbook*, and constituted professional misconduct.

Chapter 1 of the *Handbook* (Canons of Legal Ethics), Rule 5(4), states:

*No client is entitled to receive, nor should any lawyer render any service or advice involving disloyalty to the state, or disrespect for the judicial office, or the corruption of any persons exercising a public or private trust, or deception or betrayal of the public.*

JB further admitted that he recklessly made certain representations to lenders that led them to believe their loans would be repaid, and that this conduct constituted professional misconduct.

Pursuant to Rule 4-22, the Discipline Committee and the hearing panel accepted JB's admissions of professional misconduct and his proposed disciplinary action. The panel accordingly ordered that he be suspended for 12 months, effective February 19, 2003.

The panel noted that it was not possible to rationalize the 12-month suspension of JB (which the panel considered appropriate) with the nine-month suspension imposed on another respondent in [2001] LSBC 16 (see *Discipline Case Digest* 02/15) in which the respondent had been "... prepared to in effect blackmail a former client who was also his ex-wife, for personal gain." The panel believed the suspension of the respondent in that case to have been an inadequate penalty.

*Discipline Case Digest — 2003: No. 08 April (JB)*