

Brian Maurice Legge

Vancouver, BC

Called to the Bar: May 12, 1967

Suspended pending hearing: November 10, 2003

Discipline hearing: November 25-26, 2003

Panel: G. Ronald Toews, QC, Chair, Anne K. Wallace, QC and Ralston S. Alexander, QC

Reports issued: November 26, 2003 (facts and verdict), indexed as [2003] LSBC 42, and February 6, 2004 (penalty), indexed as 2004 LSBC 02

Counsel: Jessica S. Gossen, for the Law Society, and Christopher E. Hinkson, QC, for Mr. Legge

Summary

Mr. Legge breached numerous Law Society accounting rules relating to his trust and general accounts and, on two occasions, failed to immediately rectify shortages in his trust account and report the shortages and the circumstances surrounding them to the Law Society. His firm failed to remit PST, GST and employee source deductions, which amounted to a breach of trust. Mr. Legge failed to serve some clients in a conscientious, diligent and efficient manner to provide a quality of service expected of a competent lawyer and failed to acquire and maintain adequate knowledge of real estate practice, procedures and skills to represent client interests effectively. He did not provide a substantive response to communications from the Law Society that required his response. The hearing panel found that Mr. Legge's actions amounted to breach of the Law Society Rules, with respect to the accounting rule breaches, and professional misconduct with respect to his other conduct. The panel reviewed all the factors affecting penalty, including Mr. Legge's professional conduct record, which revealed a consistent theme of Mr. Legge failing to abide by Law Society rules and, after being given chances to practise law appropriately and on specific terms, ignoring those terms. The panel stressed the importance of deterring Mr. Legge from future misconduct and maintaining public confidence in the legal profession. The panel determined that an eight-month suspension would be an appropriate penalty, with credit accorded for the five months Mr. Legge had already been out of practice. He was accordingly ordered to be suspended for three months, effective February 6, 2004, to pay costs and to fulfil conditions prior to returning to practice.

Facts

Breaches of Law Society accounting rules

Beginning in May, 2002 Mr. Legge began practising with L, S & Associates, a firm he established. A Law Society audit of the firm in 2003 revealed that, with respect to certain clients, Mr. Legge:

- breached Law Society Rule 3-48 by not accounting to the clients for all funds received on their behalf;
- deposited into his trust account funds other than trust funds, contrary to Rule 3-52(3) and (4);
- failed to maintain sufficient funds on deposit in trust to meet his obligations for certain clients, contrary to Rule 3-55;

Mr. Legge was also found to have breached the following accounting rules:

- Rule 3-56(1.2) by authorizing a payment from funds in trust when there were not sufficient funds in trust for the client on whose behalf they were to be paid;
- Rule 3-59(3) by failing to record transactions in books, records and accounts in chronological order and in easily traceable form;
- Rule 3-60(a)-(d) by failing to maintain the required trust books, records and accounts;
- Rule 3-61(1) by failing to maintain general books, records and accounts, including a general cash book or synoptic journal, and failing to maintain an accounts receivable ledger or other suitable system to record all transactions in which a bill has been delivered or a disbursement made;
- Rule 3-62(1)(c) by failing to maintain a proper billings file;
- Rule 3-63(1) by failing to record each trust and general transaction within the required time frames;
- Rule 3-63(2) by failing to record in his general books and accounts all funds received on account of fees or otherwise from or on behalf of clients;
- former Rule 3-64 by failing to add and balance his trust and general cash book and synoptic journal at least monthly;
- Rule 3-65(4) by failing to make the required trust reconciliation not more than 30 days after the effective date of the reconciliation;
- former Rule 3-68(2) by failing to retain the trust books, records and accounts relating to the most recent five-year period at his chief place of practice.

Failing to remit GST, PST and employee source deductions

Mr. Legge's law firm collected, but failed to remit, provincial sales tax (PST) and federal goods and services tax (GST) in a timely manner, contrary to the *Social Service Tax Act* and *Excise Tax Act* respectively.

His law firm also failed to remit employee source deductions in 2002, contrary to the *Income Tax Act*. These unremitted deductions amounted to \$8,772.42 as of May, 2003, including penalties and interest in relation to employment insurance and CPP.

Failing to serve clients in a conscientious, diligent and efficient manner

A Law Society review of Mr. Legge's files revealed a consistent pattern of disorganization, including loose documents and correspondence; few handwritten notes or references to telephone discussions; a lack of correspondence, including the absence of reporting letters to clients and banks; incorrect dates on reporting letters and incorrect or indiscernible dates on which documents were signed; inaccurate documents amended by hand after being signed by clients; failure to fulfil some undertakings, such as to pay property tax or discharge builders' liens; failure to follow up on holdback funds owed to a client and failure to provide a state of title certificate to lenders.

Failing to remedy and report trust shortages

In relation to one client, Mr. Legge permitted a trust shortage of \$11,154.89 to exist from November 27, 2002 to January 20, 2003. In relation to another client, he permitted a trust shortage of \$5,473.29 to exist from December 13, 2002 to April 7, 2003.

In both cases he failed to immediately pay funds into the account to eliminate the shortages or to report the shortages and the circumstances surrounding them to the Law Society, contrary to Rule 3-66.

Failing to respond to the Law Society

On March 5, 2003 the Law Society wrote to Mr. Legge seeking his explanation of a complaint. The Society wrote follow-up letters on April 4 and April 22 requesting a reply. On April 29 a staff lawyer for the Society spoke by telephone with Mr. Legge who denied the assertion of the complainant. He said he would provide a written response by April 30, 2003, but failed to do so. The staff lawyer wrote a further letter on May 6 noting that, should Mr. Legge fail to respond within five days, the matter would be referred to the Discipline Committee. The Society received no reply.

Verdict

The hearing panel found Mr. Legge guilty of breaching the Law Society Rules, specifically, various accounting rules relating to his trust and general accounts.

The panel further found Mr. Legge guilty of professional misconduct in the following respects:

- failing to serve clients in a conscientious, diligent and efficient manner to provide a quality of service expected of a competent lawyer, contrary to Chapter 3, Rule 3 of the *Professional Conduct Handbook*, and failing to acquire and maintain adequate knowledge of real estate practice, procedures and skills to represent client interests effectively, contrary to Chapter 3, Rules 1(b) and (c) of the *Handbook*;
- failing to remit PST, GST and employee source deductions, which failure amounts to a breach of trust;
- on two occasions, failing to immediately rectify shortages in his trust account and failing to immediately report these shortages, and the circumstances surrounding them, to the Law Society, contrary to Rule 3-66;
- failing to provide a substantive response to communications from the Law Society that required his response, contrary to Chapter 13, Rule 3 of the *Professional Conduct Handbook*.

Penalty

In reviewing Mr. Legge's professional conduct record, the hearing panel flagged a consistent theme of Mr. Legge failing to abide by Law Society rules and, after being given chances to practise law appropriately and on specific terms, ignoring those terms. In 1998 Mr. Legge had been the subject of a conduct review for alleged reporting irregularities. A citation was issued, but later rescinded when Mr. Legge undertook not to return to practice without first obtaining a satisfactory psychiatric report. He ceased practice and, after a reinstatement hearing in 2000, a panel found that his practice difficulties were attributable to depression. He was reinstated subject to various reporting conditions.

After a citation was authorized against him in May, 2003, Mr. Legge appeared before a panel of Benchers

to determine if he should be suspended on an interim basis. The panel declined to suspend him, but imposed various conditions for his return to practice. Mr. Legge resumed practice in August, 2003 although he had not fulfilled one of the conditions - that he employ a bookkeeper. Mr. Legge also underwent a conduct review in June, 2003 arising from his failure to advise a client of a possible missed limitation date. The conduct review subcommittee found that he was suffering from clinical depression and that his ability to practise was questionable and must be carefully monitored.

With respect to the conduct at issue in the hearing, the hearing panel noted that Mr. Legge was a senior practitioner who should have known better but simply disregarded rules and trust obligations and did nothing to remedy the accounting chaos in his practice. When given an opportunity to correct the error of his ways, he ignored the obligations placed on him.

The panel stated it was particularly concerned about deterring Mr. Legge from similar conduct in the future, noting that it was not impressed with the attitude he demonstrated during the hearing. The panel pointed to Mr. Legge's casual attitude towards maintaining financial and other records and to responding to requests for information to the Law Society. He tended to gloss over the seriousness of the misconduct and did not point to any mitigating circumstances other than his insolvency.

The panel also stressed the importance of maintaining public confidence in the legal profession. The Law Society must be seen to ensure that lawyers take proper care of the money the public entrusts to them and that lawyers are accountable for the handling of those funds.

After reviewing the circumstances of this case and all of the factors affecting penalty, including penalties imposed in other cases, the panel determined that an appropriate penalty would be an eight-month suspension, with credit accorded for the five months that Mr. Legge spent out of practice over the summer of 2003 and from the time of the penalty hearing to the date on which the penalty decision was rendered.

The panel accordingly ordered that Mr. Legge:

1. be suspended for three months, effective February 6, 2004;
2. prior to returning to practice:
 - a) submit to a psychiatric evaluation satisfactory to the Law Society by a psychiatrist acceptable to the Law Society, at the Society's expense;
 - b) enter into a practice supervision agreement on terms acceptable to the Society, at Mr. Legge's expense; and
 - c) provide a substantive response to the Law Society's previous requests for information; and
3. pay \$7,407 towards costs of the discipline proceedings, payable in monthly instalments of \$350, commencing July 1, 2004.