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: Ralston S. Alexander, Q.C., Single Bencher Panel

Counsel for the Law Society: Jean Whittow, Q.C. and Efrem Swartz
Counsel for the Respondent: Craig Dennis

Background

[1] A citation was issued against the Respondent on July 23, 2003. The Schedule to the citation was amended on January 20, 2005.

[2] This matter came before me on February 14, 2005 as a single Bencher Panel by consent.

[3] The parties had concluded an Agreed Statement of Facts and the Respondent admitted that he had professionally misconducted himself in respect of a number of the counts in the citation.

[4] Following my acceptance of the Respondent's acknowledgement of professional misconduct, the parties agreed that I could properly invite submissions on the penalty to be imposed as provided in Rule 4-35.

Facts

[5] The Respondent in this matter is a junior lawyer, having commenced articles in May of 2001. On May 17, 2002, at the completion of his articles, he joined Brian Legge in partnership under the firm name Legge Sarai.

[6] As a result of irregularities in the practice of Legge Sarai which came to the attention of the Law Society, the Law Society retained Mr. William Kinsey, a forensic accountant to conduct a review of the accounting records of the firm. Mr. Kinsey prepared a very detailed and comprehensive report in respect of the matters which are the subject matter of this citation. Mr. Kinsey's report was before me.

[7] The Law Society retained Ms. Penny Lehan, an experienced real estate lawyer, to conduct a review of the real estate files of the Legge Sarai practice. Her extensive report (in two parts) detailing numerous deficiencies in the practice was before me.

[8] As between Mr. Legge and Mr. Sarai, Mr. Sarai was primarily responsible for the real estate component of the practice. Mr. Sarai acknowledged that although Mr. Legge had primary responsibility for the management of the office, Mr. Sarai was obliged by the Rules of the Law Society to ensure that the practice

was operated in a manner that conformed to those Rules.

[9] The citation in this matter is lengthy, with the amended Schedule comprising slightly more than 6 pages of single spaced, itemized delicts. I will not reproduce the amended Schedule to the citation in these reasons as it is extensive and to a significant extent, repetitive.

[10] The general nature of the counts in the citation are as follows:

- Count 1 alleges thirteen separate breaches of the Law Society Accounting Rules with respect to the operation of the Legge Sarai practice.
- Count 2 alleges a trust shortage in the amount of $11,154.89 which trust shortage was not immediately eliminated as required by the Rules and was not reported to the Executive Director of the Law Society.
- Count 3 alleges a breach of a condition of the Practice Supervision Agreement the Respondent was required to enter into as a result of the difficulties he was encountering with his real estate files. The particulars of the breach relate to the failure of the Respondent to provide each entire file and trust ledger to the Practice Supervisor within seven days of the completion of the transaction.
- Count 4 alleges numerous breaches of undertakings by the Respondent in respect of the conduct of his real estate practice. The undertakings which are alleged to have been breached are the normal types of undertakings given in the normal course of a real estate transaction. Examples of such undertakings include the failure to pay outstanding property taxes from sale proceeds, the failure to provide proof of repayment of existing mortgages and a failure to withhold holdback monies under the *Builders' Lien Act* for the required period of time, the failure to remove offending charges from title, the failure to file an annual report, and a failure to pay outstanding strata fees from sale proceeds. The breaches of undertaking by this Respondent are numerous and wide ranging.
- Count 5 of the citation alleges a failure on the part of the Respondent to acquire and maintain adequate knowledge of the practice and procedures by which the substantive law in respect of real estate transactions can be effectively applied and that the Respondent failed to serve each client in a conscientious, diligent and efficient manner. The citation detailed a series of incidents which constitute the particulars of the allegations described this count.
- Count 6 of the citation alleges a number of incidents in which the Respondent breached the trust accounting Rules of the Law Society.

[11] With only two exceptions, the Respondent acknowledged the accuracy of the factual basis upon which the citation was developed.

[12] The Agreed Statement of Facts is a 17 ½ page detailed document which particularizes, in some way, the circumstances of each count in the citation. It includes, in some instances, references to the Kinsey report and/or to the Lehan reports described above, by reference to a file number only. In order to fully understand the extent of the misbehavior, it was necessary for me to cross reference the file references in the Agreed Statement of Facts with the Kinsey forensic accounting report and/or with the Lehan Practice Review report. In this manner, the Agreed Statement of Facts incorporated an additional 73 file incidents, with nothing more than a file number as a reference. In the result, the Agreed Statement of Facts was much shorter than would otherwise have been the case.

[13] This description of the structure of the Agreed Statement of Facts and the respective reports from Kinsey and Lehan is provided to explain why the factual basis of this Respondent's misconduct is not more fully particularized in these reasons. To record the details of the incidents of misconduct before me, the

report would have been several hundred pages long. It is sufficient to say that there are more than 150 separate instances of either neglect, misconduct, breach of Rules, or breach of undertaking in respect of this Respondent's conduct of the real estate practice of Legge Sarai at the material time.

[14] The acknowledgements of professional misconduct and breaches of the Rules by this Respondent considerably facilitated the hearing process by relieving the Law Society of the task of proving each particular of each count one at a time. Much time and effort was spared in the result.

[15] Having said that, it is necessary for readers of these reasons to develop a sense of the wide ranging and extraordinary scope of the delicts for which the Respondent has responsibility in order to provide a context within which the penalty to be imposed can be comprehended. It is unlikely that a more extensive array of real estate practice misconduct will come before a discipline panel in the future. The circumstances of this practice are unique and should not be permitted to repeat in the future. The scope of the circumstances leading to this citation is massive.

Supplementary Facts of Significance

[16] There are several characteristics of the circumstances of the Respondent that require an explanation. The Legge Sarai firm ceased its business operations as a partnership on April 30, 2003, and Mr. Sarai was left "holding the bag". Mr. Legge did not contribute to the accumulated losses and debts of the firm. To his considerable credit, Mr. Sarai took full responsibility for the debts of the firm and has ensured that there are no unpaid creditors.

[17] Once trust shortages were brought to Mr. Sarai's attention, he dealt with them promptly. It is clear his failure to deal with trust shortages as described in the Agreed Statement of Facts was because he did not know about them.

Position of the Law Society

[18] The Law Society developed and presented a very complete argument. The Law Society requested a penalty of 6 to 8 months suspension together with conditions on the practice of the Respondent upon re-instatement. One of the conditions suggested was that the Respondent be prohibited from practice in the area of real estate until such time as he is competent to do so.

[19] The Law Society noted some shortcomings in the manner by which Mr. Sarai's legal career began. It was noted in particular that Mr. Sarai started his professional practice life in partnership with Mr. Brian Legge, a former member of the Law Society who has a history of difficulties in his practice.

[20] The Law Society noted that in June of 2003 a Practice Supervision arrangement was put in place to remedy the problems seen in the Respondent's real estate practice and to provide an opportunity for Mr. Sarai to distance himself from the types of inappropriate behavior that led to his difficulties. It was noted that his varied incidents of professional misconduct were not motivated by personal gain. It was also noted however, that the degree of inattention exhibited in his conduct of the real estate files was to such an excessive extent as to preclude inadvertence as the cause. It was, in the words of the Law Society, "cavalier and reckless" behaviour and it was suggested that supervision for this Respondent was apparently not a useful remedy.

[21] While there were numerous breaches of undertaking observed by the Law Society, it was also noted that at the end of the day there was no substantial harm done as a result of those breaches of undertaking. The harm was limited to the inconvenience suffered by other members of the Law Society and by members of the public who were required to deal with the consequences of the Respondent's sloppy practices. The

Law Society cited several authorities to assist the Panel in determining an appropriate range of penalty. There was a reference to the *Raghbir Basi* decision 2005 LSBC 01 and with respect to that decision the Law Society noted that the recent trend was toward more severe penalties for breaches of undertaking.

[22] The Law Society cautioned that I ought to distinguish the cases of *Visram* [1998] L.S.D.D. No. 127, and *Ghag* [1999] LSBC 32 as being dated authority. It was suggested that Benchers today are taking a much harder line in respect of breaches of undertaking than is demonstrated by those decisions.

[23] The Law Society did not press for a complex regime of conditions to be placed upon the Respondent's practice. It was the position of the Law Society that complexity in practice conditions leads to frustration and unenforceable relationships. The Law Society did emphasize its view that the breach of the Practice Supervision Agreement was a very serious matter as it denied the usefulness of supervision as a remedial tool. It was argued that the importance of supervision agreements must be emphasized and that this message would be communicated with a period of lengthy suspension coupled with conditions to be imposed. The primary conditions urged by the Law Society were that the Respondent only practice in a setting approved by the Practice Standards Committee and that he not engage in any real estate related file until relived of that condition by the Practice Standards Committee.

The Position of the Respondent

[24] Counsel for the Respondent suggested that there were three significant characteristics of this matter:

(a) that the admitted mistakes of Mr. Sarai did not result from dishonesty;

(b) that the Rule breaches and admitted misconduct did not result in any personal gain for Mr. Sarai;

(c) that the conduct was not calculated misconduct and there was no indication that any of the conduct occasioned actual loss to clients.

[25] I had the benefit of hearing Mr. Sarai speak. His speech was provided subject to the problem that arises in circumstances where a member seeks to provide evidence to a Panel without being sworn. In these circumstances the observations of Mr. Sarai were in the main an historical perspective explaining his family background, the family view of the immensity of his accomplishment in graduating law school and being called to the Bar, the significant remorse felt by him in respect of the matters before me and the embarrassment caused to him and his family which will have enduring negative consequences for his life and practice.

[26] Counsel for Mr. Sarai stressed that Mr. Sarai had met and continued to meet the financial obligations of the collapsed firm, and that he did that with no assistance from Mr. Legge. He noted that Mr. Sarai had suffered considerably from the adverse publicity in respect of this matter and that he will suffer further adverse publicity when this report is published.

[27] Counsel stressed that Mr. Sarai, a newly called lawyer who, even at the end of his significant difficulties, had only practiced for approximately two years. Counsel produced and referred to an array of letters of recommendation and reference provided in support of the Respondent. These letters disclosed that the Respondent was very highly regarded within his community and was highly thought of by some senior and well respected members of the profession who provided letters of reference on his behalf.

[28] He noted that Mr. Sarai had cooperated fully with the Law Society throughout the investigation of the misconduct and had facilitated the Law Society's orderly processing of these matters. Although I have not heard submissions on costs in this matter, I have reviewed the reports of both Mr. Kinsey and Ms. Lehan and I am satisfied that despite Mr. Sarai's cooperation, the costs incurred by the Law Society have been

significant.

[29] Counsel for Mr. Sarai, not surprisingly, found a separate array of precedent penalty decisions upon which I could rely where breaches of undertaking led to fines and reprimands. These cases include *Barton* [2003] LSBC 04, *Morrison* [2000] LSBC 15, and *Cherney* [2000] LSBC 09. I was additionally referred to *Visram* [1998] L.S.D.D. No. 127, where a suspension of one week was imposed for breach of undertaking.

[30] The foregoing submissions flowed from a careful analysis of the various factors I was directed to consider as described in the decision of *Law Society of British Columbia v. Ogilvie*, [1999] LSBC 17.

Discussion

[31] This is a most difficult matter. The Respondent's conduct in respect of his real estate practice is inexplicable. He appears to be utterly incapable of functioning in a real estate practice. He was being reminded on a weekly basis (by his Practice Supervisor) of the requirements of his practice and the deficiencies therein and despite those supervisory interventions, he was unable to bring himself to deal with the multitude of outstanding serious shortcomings in the work that he was doing on the files.

[32] There was a certain Jekyll and Hyde characteristic of the Respondent's behavior in his conduct of the practice. In the work he was doing on his "other files", those that did not have a real property component, he performed well, conducted himself with all due propriety, acted promptly and effectively in respect of matters requiring attention and in respect of those files, attracted no attention from either the Law Society or from disgruntled clients. In short, he was in respect of his "other" files a typical young lawyer learning his way and working hard to find appropriate treatment for file problems presented to him.

[33] By contrast, his conduct in his real estate practice was bizarre in the extreme. Countless undertakings were breached on a routine and ongoing basis. It was as if he did not understand the nature and requirements of a lawyer's undertaking. There was no explanation for the utter disregard exhibited by the Respondent for his professional responsibilities.

[34] During the course of the hearing I formed the impression that the Respondent saw himself as being essentially beyond the reach of the regulatory regime of the Law Society. I characterize the Respondent as ungovernable. This because he had demonstrated an ability to disregard entirely the terms and conditions imposed upon him by the Practice Supervision Agreement, and that he was able to carry on his practice in the face of a multitude of breached undertakings, with no apparent ill effects.

[35] Recent decisions of the Benchers have indicated that matters involving breaches of undertaking will be regarded more seriously than has previously been the case. Even if that trend had not been demonstrated to my satisfaction, the existing body of decisions on breaches of undertaking would provide very little guidance to what would be an appropriate penalty in the circumstances of this case. There are no similar fact precedents available where the misconduct charged was in the same order of magnitude as is demonstrated here. This case is unique in its magnitude of misconduct.

[36] It would be wrong in this decision to concentrate on the breaches of undertaking as defining the boundaries of the impugned behaviour. There are 6 counts in the citation, with most of those counts containing many sub-counts. While it is probable that the breaches of undertaking comprise the most serious of the incidents of the misconduct, they are fully canvassed in but one of the 6 counts.

[37] The other counts in the citation, as agreed to in the Agreed Statement of Facts, include the following;

(a) the breach of a number of Law Society Rules.

(b) the acknowledged failure to identify a trust shortage in the amount of $11,154.89, a failure to pay funds into the accounts to eliminate the trust shortage, and a failure to report the trust shortage to the Executive Director of the Law Society.

(c) the failure to provide to his Practice Supervisor all files involving trust transactions as required by the Practice Supervision Agreement, and by an order of a Panel of Benchers as a condition of permitting Mr. Sarai to continue in practice.

(d) the failure to acquire and maintain an adequate knowledge of the practice and procedures and, or in the alternative, the failure to serve each client in a conscientious, diligent and efficient manner.

(e) the breach of a number of the Law Society Rules with respect to the operation of a trust account.

[38] Sub-paragraph (d) above represents a particularly significant demonstration of misconduct. It is demonstrated by the repeated breaches of undertakings and other inappropriate practices around the conduct of the real estate files. One of the cornerstones of the ability of the Law Society to maintain its entitlement to self government is a strict enforcement of those of its Rules which require that members only undertake the work they are competent to perform.

[39] Having regard to the facts of this case, it is clear that the Respondent was dramatically in default of those obligations. He was in an ongoing breach of these Rules throughout his entire practice life to the extent that he was dealing with real estate matters. This is a most serious concern.

[40] There is a danger when considering a fact pattern and citation such as this. The danger is that the sheer volume of incidents of professional misconduct may serve to trivialize the individual events of misconduct to such an extent that the seriousness of each of the individual incidents of misconduct is diminished in the face of the overwhelming volume of such considerations. It would be an aberrant outcome indeed if the penalty in the result did not properly reflect the reality that the number of incidents of misconduct in this case is overwhelmingly large.

[41] It is important to ensure that the message of condemnation of a member’s misconduct is consistently delivered. In these circumstances I am required to observe that there is no fact pattern demonstrated in the authorities cited to me which in any way approximates the volume of events of misconduct that are present in this case.

[42] It follows therefore that the penalty must reflect the special circumstances of this case. The task of choosing an appropriate penalty is made no easier by the complete absence of any explanation offered by the Respondent as to the reasons behind the misconduct. I am left entirely to speculate as to what caused this behaviour and can only conclude it is a reflection of the inexperience of the Respondent taken together with the apparently unmanageable volume of transactions with which he was faced.

[43] To ensure that the Respondent is clear that I have read and appreciated the force of the significant array of letters of support, I note that in the absence of those letters the penalty imposed by me would be even more severe than that which is contemplated herein.

[44] As I indicated to the Respondent and his counsel at the conclusion of the hearing, I had initially contemplated that the only outcome from this hearing that would be just and equitable in all of the circumstances would be for the Respondent to be disbarred. However, the strong ethic of community service as evidenced by the letters of support provided for him, together with the significant lack of experience of the Respondent in his years at the Bar, combine to produce an ameliorating effect on the penalty that should otherwise be provided.

Conclusion

[45] In the result, I have determined that it is necessary for the entitlement of the Respondent to practice law in the Province of British Columbia to be suspended for a period of one year and I so order. I propose that that period of suspension commence as at July 1, 2005, thereby providing an opportunity, between now and then, for the Respondent to find suitable transition arrangements for his existing files. To the extent that the proposed commencement date of this suspension provides an insurmountable problem for the Respondent, I am prepared to hear argument on a slightly modified commencement date.

[46] I direct that at the expiration of the period of suspension provided herein the Respondent be permitted to practice only in a practice situation approved by the Practice Standards Committee. It will be permissible for the Respondent to seek the approval of the Practice Standards Committee to a proposed practice situation during the period of his suspension so that when the period of his suspension has expired he is able to immediately resume the practice of law in that approved practice situation.

[47] I further direct that until he is relieved of this condition by the Practice Standards Committee, the Respondent have no involvement with any file which include an element of real estate work including mortgaging, conveyancing, sub-divisions and all work of a similar nature.

[48] It is my decision that the Law Society ought to recover a significant component of the costs it was required to expend in investigating and prosecuting this matter. If the parties are unable to agree among themselves as to the amount of such costs for which the Law Society should be reimbursed by the Respondent, I would be pleased to received written submissions on that account for consideration. The costs as agreed between the parties or as directed by me following written submissions shall be payable over a three year period, without interest, commencing six months following the Respondent’s resumption of the practice of law.