2006 LSBC 27
Report issued: June 28, 2006
Citation issued: November 22, 2005

The Law Society of British Columbia
In the matter of the *Legal Profession Act*, SBC 1998, c.9
and a hearing concerning

Crawford Grant Edwards

Respondent

Decision of the Hearing Panel on Facts and Verdict

Hearing dates: May 9, 10 and 12, 2006

Panel: Bruce A. LeRose, June Preston, Leon Getz, Q.C.

Counsel for the Law Society: Brian McKinley and Jaia Rai
Appearing on his own behalf: C. Grant Edwards

Citation

[1] The citation in this matter was issued on November 22, 2005 and describes the nature of the conduct to be enquired into as follows:

Your involvement in an investment scheme in which you:

a) Solicited funds from a member of the public, Mr. K.S.;

b) Allowed your status as a lawyer to be used to encourage Mr. K.S. to invest funds in such a way as to leave Mr. K.S. with the impression that you were acting for him as his counsel;

c) Personally assured Mr. K.S. that his funds would not be put at risk;

d) Allowed funds from K.S. to be deposited into the trust account of the law firm in which you were practicing;

e) Caused the release of funds received from Mr. K.S. out of the law firm's trust account into their general account and from their general account into a bank account over which you had no control, without obtaining any security for those funds, thereby putting those funds at substantial risk;

f) Solicited further funds from Mr. K.S. and allowed those funds to be deposited into the general account of the law firm in which you were practicing;

g) Caused the release of those further funds from Mr. K.S. out of the law firm's general account into a bank account over which you had no control without obtaining any security for those funds, thereby putting those funds at substantial risk;

when you either knew or were wilfully blind that the investment scheme was fraudulent, or you were reckless as to whether the scheme was fraudulent and that the funds would be at risk, or you were grossly negligent in circumstances which required an inquiry and investigation by you into the validly and propriety of the investment scheme. In doing so, you engaged in activity that you knew or ought to have known assisted in dishonesty, crime or fraud, contrary to Chapter 4, Rule 6 of the *Professional Conduct Handbook*.

Although the citation concerns only the conduct of the Respondent in relation to K.S., there is a larger background that requires some explanation. Before doing this, however, we should briefly say something about the evidentiary burden and the standard of proof.

Some preliminary observations about the evidentiary burden and the standard of proof

[2] The relevant principles here are by now well known and do not require extensive citation of authority. They are succinctly stated in the recent decision of the Benchers in *Law Society of BC v. Martin* 2005 LSBC 16, paragraph [137].

(a) The onus of proof throughout these proceedings rests on the Law Society to prove the facts necessary to support a finding of professional misconduct;

(b) The standard of proof is higher than the balance of probabilities but less than reasonable doubt. The standard is a civil standard but rises in direct proportion to the gravity of the allegation and the seriousness of the consequences.

[3] In assessing the evidence we have tried to bear these principles in mind.

General Background

The Respondent

[4] The Respondent was called to the Bar on May 15, 1972 and practised as a sole practitioner from January 1, 1981 until December 31, 1984. He was a ceased member from January 1, 1995 until August 19, 1999 and returned to practice on March 12, 2002. Thereafter, he practised at James L. Davidson and Company in Surrey as an associate lawyer. The events that form the background to the citation occurred while the Respondent was at that firm.

The Respondent, J.S. and J.B.

[5] An important part of the background to this matter concerns the relationship of the Respondent to one of his clients, J.S., and J.S.'s wife. J.S. was at all material times a director and officer and a principal shareholder with some 99 percent of the outstanding shares of one of the Respondent's corporate clients, WCR. The Respondent held one percent of the shares of WCR and was also an officer and director of the company.

[6] The Respondent has had a long-standing and close friendship with J.S., his wife and his family. Indeed, he described J.S.'s wife as being a " second mother" to him.[1] J.S. is of Czechoslovakian origin and is now very elderly. The Respondent testified that J.S. had a distinguished public career in the affairs of the country of his birth. He testified to his unqualified admiration and respect for both J.S. and his wife, to J.S.'s integrity and to his implicit and unreserved trust and confidence in J.S. Similar evidence was given by another witness, J.B., a United States resident whom J.S. had introduced to the Respondent and who had since become a client of the latter.

[7] We have absolutely no reason to question the Respondent's evidence about J.S., his record or his integrity.

The investment project - the Government of Canada, the Bank of Canada or the Business Development Bank

[8] Some time in November 2004, both the Respondent and J.B. were present at the home of J.S. in Vancouver. There they were introduced to a Mr. P. from Montreal, who was apparently staying with J.S. and his wife as a house guest. Both the Respondent and J.B. understood that Mr. P. was an official of one of the Government of Canada, the Bank of Canada or the Canadian Business Development Bank and that he was either a friend or a business associate of J.S. It is unclear just what their understanding was, but both the Respondent and J.B. understood or believed that Mr. P. was a banking official who was somehow connected, directly or indirectly, to the Government of Canada. The Respondent testified that he was briefly shown some form of identification by Mr. P. - it may have been a business card - but he did not examine it closely and did not recall what it revealed, if anything, about Mr. P.'s title or occupation, his precise status or the nature of his claimed connection with the Government of Canada.

[9] Both the Respondent and J.B. testified that, at this meeting, Mr. P. explained that one of the Government of Canada, the Bank of Canada or the Canadian Business Development Bank (they were not sure which) had set aside a substantial sum of money - we were told it was " in excess of $100 million" - to be made available to worthwhile enterprises with socially useful or beneficial objectives. Neither was able to tell us much more than this about these funds or their proposed uses nor did they have a clear understanding as to whether the funds would be made available to these worthy causes by way of loan or as equity. Both testified that Mr. P. explained that the project was to be administered by a private sector entity that would act as " project manager" . He said that there had been one " bid" for the contract to act as project manager, but concerns had arisen about its financial resources and stability. Mr. P. thought that there was an opportunity for a well-capitalized entity to step in and win the project management contract and that substantial fees could be earned by that entity if successful. Mr. P. stressed the importance of moving quickly to take advantage of the situation. He apparently also indicated that the project manager had to be capitalized at around $16 million and, as we understand it, provided details of a bank account at a branch of the Bank of Montreal in Montreal, into which funds should be wired. Just what these funds (as distinct from the Government entity) were to be used for, was not explained.

[10] Neither the Respondent nor J.B. could explain what fees the project manager would earn from its administration of the government funds. There was some suggestion in the evidence that the project manager might also earn investment returns, but the evidence about how this might happen was, to put it charitably, vague. At all events, the $16 million was later allegedly reduced to about half that amount [2] and, thereafter, was further reduced to something of the order of about $5.5 million. The evidence does not disclose any explanation for this.

[11] At all events, and despite his seemingly minimal knowledge of any details of the structure of the

investment or, we feel bound to say, any apparent overall understanding of it, the Respondent was apparently confident that it was legitimate. J.B. shared this view. Their confidence was based on the fact that, although they hardly knew Mr. P., he had been introduced to them by J.S., of whom he appeared to be a good friend, and they had a high regard for J.S.'s integrity and trustworthiness. We infer that Mr. P.'s alleged connection with the Government of Canada or one of its agencies provided the Respondent (and J.B.) with some comfort, and they derived additional assurance from the fact that J.S. was apparently intended to be involved in some fashion in the project management company. In the case of J.B., there seems to have been an additional consideration, namely that, as he testified, he thought that one of the many companies that he owned or controlled in the United States and that had reportedly developed some revolutionary technology for generating electricity at a fraction of the cost of traditional generating stations, would be a worthy object for at least some of the Canadian Government's money.

[12] There is no evidence that the Respondent had any coherent understanding of the investment scheme, either in 2004 or at any time since. His evidence before us left us with the distinct impression that that is still the case. Moreover, there is no evidence that he made any inquiries, of J.S., Mr. P., the Government of Canada, the Bank of Canada, the Business Development Bank or anyone else with a view to forming an independent view about the legitimacy of the " investment" , about what its precise structure was and whether that structure made sense, as to the integrity or trustworthiness of Mr. P., or whether Mr. P. was what he claimed to be. Subject to two qualifications to be mentioned below, no inquiries of any Federal Government agency were made because, we were told, it was important to maintain secrecy and because the Respondent relied throughout, as apparently did J.B., on the connection with J.S. and their confidence in him.

[13] The two qualifications referred to are these:

(a) J.B. testified that he had had several telephone conversations with an official of the Bank of Montreal branch at which Mr. P. had his account and was told that, while the account was in the name of Mr. P., the account number was one " normally held" either by or for the Bank of Canada or the Government of Canada. J.B. was a little imprecise in his recollection of these conversations, but the information he was given gave him, he said, considerable comfort. He conveyed his impression to the Respondent, and this reinforced the latter in his belief that everything was legitimate. J.B. was unable to throw any light on the status of the Bank of Montreal official to whom he spoke. We are bound to say that considerations of confidentiality of client affairs, at least, render it, in our opinion, improbable that any bank official would have disclosed the sort of information J.B. says he was given. That information was so unusual that we think that J.B. either misheard or misunderstood what he was told. Be that as it may, while J.B. may not have appreciated this, its unusual character should immediately have been apparent to the Respondent. Our view is that, far from deriving comfort from it, it should have aroused the Respondent's suspicions and prompted further enquiries;

(b) the Respondent testified that, on one occasion, at the request of J.S., he contacted Mr. P. to see if he could ascertain the reasons for a delay in granting visas to two Russian businessmen who wished to come to Vancouver to engage in negotiations about some other business with J.S. According to the Respondent, he was able to give Mr. P. the name of one of the businessmen but not the other, which he could not recall. Despite this, " within about 15 seconds" Mr. P. called back with both names, the name of the Embassy employee who had initiated inquiries about the Russians, and the reason for those inquiries. From this the Respondent says he concluded that Mr. P. must have security clearance " at the highest level" , and this, too, led him to conclude that Mr. P. was who he had claimed to be and that the proposed transaction was legitimate.

[14] Two affidavits - one from an official of the Bank of Canada and the other from an official of the Business Development Bank of Canada (BDC) - were received in evidence. In the first, the deponent says, among other things, that:

(a) no one by the name of Mr. P. is, or has ever been, an employee or a nominee account holder of the Bank;

(b) the Bank does not maintain accounts with chartered banks in the names of nominees; and

(c) there are no restrictions on the Bank holding an account in its own name in a chartered bank.

In the second, the deponent says:

(a) that no one by the name of Mr. P. is or has been employed by BDC or retained by it as a consultant; and

(b) that BDC does not for any purpose whatsoever maintain bank accounts in chartered banks in the names of nominees.

J.B., the solicitation of funds in the US and its consequences - the period up to March 31, 2005

[15] It seems that, not long after his initial encounter with Mr. P., J.B. began to approach some of his contacts in the United States with a view to interesting them in the possibility of investing in the project. There is no evidence that any of these approaches was successful, but as we understand matters, some of J.B.'s contacts expressed a concern to him about the security of their funds against misappropriation or loss. To provide " assurance" on this point, it was suggested that the funds be transmitted to the Respondent's trust account. On February 10, 2005, one of these prospective US investors wrote to " Mr. Edwards, Senior Trial Lawyer" advising him of their " undertaking and commitment to invest 8.5 million into a project via your attorneys' trust account." [3] The letter, the form of which seems to have been prepared by J.B., disclosed that J.B. " has promised us substantial returns, in a short period of time" and noted that " it is our understanding that the funds are covered by your group insurance plan through the Law Society of British Columbia."

[16] On January 12, 2005, the Respondent swore the following Statutory Declaration:

1. I am a senior trial lawyer practicing law in the Province of British Columbia and I am in good standing with the Law Society of British Columbia.

2. On January 12, 2005[4] I was present at a meeting between the signatory of the project funding bank and the designated recipient of the project funding (hereinafter referred to as " Project Manager").

3. I observed that the authorized signatory for the project-funding bank has agreed to fund the project for the Project Manager. In fact, the funds have already been issued in the form of multiple bank drafts that are being held by the authorized signatory of the project-funding bank.

4. I observed that the authorized signatory of the project-funding bank verified that the bank drafts, in excess of $100 million, are being held for the benefit of the Project Manager.

5. I observed that the authorized signatory of the project funding bank has verified that the bank drafts will be disbursed to the Project Manager within three to five banking days after the receipt of the deposit of $16.5 million.

6. The project funding bank is known to me to be a top five Canadian Bank.

7. The project account is known to me to be a Canadian Government bank account.

8. I observed that the authorized signatory of the project-funding bank stated that the deposit in the amount of $16.5 million shall be regarded as a deposit to trigger the full funding of the project and shall be fully refundable in the unlikely event that no project funding occurs, for any reason. In that event, the deposit shall be refunded to the originating bank account.

9. I have the coordinates of the project funding government bank account at the bank referred to in paragraph 6 above.

10. I personally know both project managers and have personal knowledge of the extensive business history and experience of each of them.

[17] Some of the statements in this solemn declaration seem, at least as expressions of personal knowledge, problematic and the general form does not seem to be what would be expected from a " senior trial lawyer" . Somewhat surprisingly, the Respondent was not cross-examined on the circumstances in which it was made or its purpose of making it, nor was he asked what he or, to his knowledge, anyone else, did with it after it had been sworn. In the absence of evidence about these matters we are unable to reach any concluded view about the significance of the statutory declaration. Our impression - it is no more than that - is that taken as a whole, it has the appearance of having been made to lend authenticity or plausibility to something said by others - perhaps the promise of " substantial returns" apparently made by J.B.[5] But we make no finding about this.

[18] As we understand it, the Respondent received a number of calls from prospective investors in the United States, all with a view to getting assurance about the safety of their funds should they decide to invest. He advised the callers that they would have such assurance if the funds went through his trust account, and he suggested they contact the Law Society to obtain confirmation of this. In about February 2005, the Law Society began to receive such calls.

[19] As a result on March 4, 2005, the Respondent was contacted by telephone by Law Society Investigator, Paul Willms, and Professional Conduct Manager, Tim Holmes. According to the Statement of Agreed Facts:

> Mr. Edwards was advised of the contact the Law Society had received from various persons in the United States discussing an investment scheme. Mr. Edwards advised as follows: the investment related to a Canadian Government sponsored program related to the movie industry[6] and that his client, [J.B.] was seeking the investment from others. He expressed concerns that if the Law Society contacted the Government that it would negatively effect [sic] the deal. Mr. Edwards said he had satisfied himself that the deal was legitimate and that it involved people he already knew including a local associate of [J.B.] and a " lead banker" . He insisted he had " no fear of anything illegitimate" .

[20] On March 7, 2005, Margrett George, Program Administrator with the Lawyers Insurance Fund,

wrote to the Respondent and advised him that there would be no insurance coverage for the loss of investments made pursuant to the scheme he had described. In the course of her letter Ms. George set out her understanding of the investment opportunity:

> Investment funds are being solicited with a promised return of 100% within a very short period of time. The funds are being solicited by your client, Mr. B. The opportunity exists as Mr. B wants to access monies available through a government grant program related to the film industry. To access these grant monies, Mr. B must show that he has other funds in place. The investment funds are these other funds and Mr. B is prepared to pay each investor an amount equal to 100% of their investment for the temporary use of their funds. The investment funds will be held in your trust account.... There is no security for the funds. The funds are needed quickly.

She then explained that coverage would be denied for at least the following reasons:

> 1. With respect to Part A ... [because] you are courting a risk in continuing to involve yourself in the Investment Opportunity....
>
> 2. With respect to Part B, it is the Insurer's position that anyone investing in the Investment Opportunity is doing so at their own risk....

Ms. George also said:

> I understand that you have represented to an investor that trust protection coverage (Part B) " guarantees" protection for that investor. In light of this letter, you will want to correct any representations that you have made about Part A or Part B.

[21] According to the Statement of Agreed Facts:

> 5. On March 8, 2005, Mr. Edwards met with Paul Willms and Tim Holmes. Mr. Edwards was asked what his role was to be in the investment scheme. He advised he was to ensure all legalities were looked after and that he would accept and disburse funds. He advised he would receive legal fees plus 10% of any profit. Mr. Edwards advised that his client whom he referred to throughout as " Max" [7] was well known to him. He advised that Max had a banker associate who had authority to distribute government programs. The banker associate had asked Max if he wished to be a project manager on one of these programs which required the project manager to come up with 8.5 million dollars " to show they have substance" before the government money became available. He advised that Max knew [J.B.] who was involved in the film industry in California and that Max had introduced [J.B.] to Mr. Edwards.
>
> 6. On March 9, 2005, Mr. Willms and Mr. Holmes called and spoke with Mr. Edwards. Mr. Holmes advised Mr. Edwards as a follow-up to their meeting the day before that he wished to draw his attention to a recent Rule change in the *Professional Conduct Handbook* and he referred Mr. Edwards to Chapter 4, Ruling 6 and emphasized the footnote to that Rule. Mr. Edwards said " it appears we have a difference of view" as he believed he had made the necessary inquiries and he did not see anything wrong with the deal unless both the banker associate and Max were providing a complete charade. Mr. Edwards was asked specifically if he had made any inquiries directly with the Government of Canada and he said he had not, and he could not as it may indicate to them the potential " favouritism" in the scheme.

[22] According to the notes of Mr. Willms, who testified at the hearing, at the meeting on March 8, 2005

he " took this opportunity to explain previous problems that other lawyers had faced and that the LSBC had investigated. Specific "red flags' discussed were: described need for absolute secrecy, high rates of return, short deadlines, need to put up money to get money, unclear application of funds."

[23] Also on March 9, 2005, Mr. Holmes wrote to the Respondent enclosing a copy of Chapter 4, Ruling 6 of the *Professional Conduct Handbook* together with a copy of the footnote to that ruling. Ruling 6 says:

> A lawyer must not engage in any activity that the lawyer knows or ought to know assists in or encourages any dishonesty, crime or fraud, including a fraudulent conveyance, preference or settlement.
>
> The footnote to this Ruling says:
>
> A lawyer has a duty to be on guard against becoming the tool or dupe of an unscrupulous client or of persons associated with such a client and, in some circumstances, may have a duty to make inquiries. For example, a lawyer should make inquiries of a client who:
>
> (a) seeks the use of the lawyer's trust account without requiring any substantial legal services from the lawyer in connection with the trust matters, or
>
> (b) promises unrealistic returns on their investment to third parties who have placed money in trust with the lawyer or have been invited to do so.

[24] On March 5, 2005, the Respondent wire transferred US $15,000 from his own personal account to the account in Montreal that had been designated by Mr. P. On March 22; 2005, J.B. wired US $50,000 to the same account.[8] None of these funds went through any account at Davidson and Company.

August and September 2005 - K.S. and his funds

[25] Except that, on June 30, 2005, the Respondent wired a further US $10,000 of his own funds to the designated account in Montreal, nothing of great significance to the citation occurred between the end of March and early August 2005, when K.S. came into the picture.

[26] K.S. is in his seventies. He lives in Red Deer, Alberta where for many years he ran a pharmacy business. He sold the business in August 2005. The sale proceeds were substantial.

[27] Another resident of Red Deer is W.E., who is the Respondent's uncle. W.E. is now in his eighties and retired. For a number of years he was the manager of a branch of the Royal Trust in Red Deer.

[28] W.E. was a customer of K.S.'s pharmacy. He and K.S. have known one another for at least 15 years. There is some evidence of a financial transaction between them in 1994 [9] but this was not much explored at the hearing. K.S. described W.E. as a very nice, trustworthy man.

[29] There is apparently a close relationship between uncle and nephew, and they speak regularly to one another by phone. It seems that, in the course of a telephone conversation some time in the first week or so of August 2005, the Respondent mentioned the investment scheme to his uncle. It is not entirely clear whether the call was initiated by the Respondent or his uncle, nor is it clear how the subject of the scheme came up or what information the Respondent gave his uncle about it. It does not seem to have been a particularly detailed conversation.

[30] Not long after this conversation, W.E. went to K.S.'s pharmacy to collect a prescription. While there, he encountered K.S. and, during the course of what seems to have been a fairly casual conversation, mentioned that he had heard of an investment opportunity that he thought might be quite interesting and held out the prospect of doubling the amount invested within a fairly short time. W.E. did not seem to have much information about the investment, although he seems to have said enough to raise K.S.'s curiosity and interest and, as we understand it, K.S. either asked W.E. or suggested to him that he could get more information from the Respondent. Uncle apparently spoke highly of his lawyer nephew to K.S. At some point, whether in this conversation or another not long afterwards, K.S. was given the Respondent's telephone number.

[31] K.S. telephoned the Respondent to make further inquiries and was told that there was an opportunity to double his money within 45 days. He testified that the Respondent also said that he thought that it was a good investment and that, if it did not succeed [10] within 45 days, he would get his money back. K.S. also said that even after this conversation he did not really understand much about the scheme, although the Respondent did tell him that there was some connection with, he now thinks, the Bank of Canada.

[32] KS said that he and the Respondent discussed a possible investment of US $500,000.[11] He says that the Respondent told him that there was an immediate need for US $300,000. The Respondent's evidence was that he told K.S. that considerations of confidentiality prevented him from providing details of the bank account that was the ultimate destination of his funds. He did, however, give K.S. details of the pooled trust account of James L. Davidson and Company, told him to wire the funds to that account and said that he would arrange to forward them. He assured K.S. that in this way his funds would be safeguarded. On August 16, 2005, K.S. wired US $300,000 to the trust account. The same day those funds were converted into $358,170 (Can.) and paid out to Mr. P. through the designated bank account in Montreal.

[33] K.S. testified that he understood that the Respondent would be acting as his lawyer in connection with the receipt and disbursement of his money. The Respondent was emphatic that he quite explicitly told K.S. that he was not acting in that capacity.

K.S. invests a further US$200,000

[34] It seems that, some time towards the end of August 2005, the Respondent learned that J.B. was having difficulty in coming up with approximately US $200,000 that - the evidence is somewhat unclear about this - was either needed for the purposes of the project, or that he had committed to contributing. The reasons for this are not relevant.

[35] What happened next is a matter of some dispute. K.S. testified that the Respondent telephoned him around August 31 and said words to the effect of " let's not let this deal die" , and asked K.S. to put up the additional US $200,000 that had been discussed in their original conversation a few weeks earlier. It was explained to K.S. that there was some urgency about this, and the US $200,000 balance of his commitment was needed by September 1, 2005. The Respondent gave him wiring instructions for Davidson & Company's general account, rather than the trust account to which the origianl funds were sent. K.S. was a little unclear as to what else, if anything, the Respondent said to him on this occasion.

[36] The Respondent's evidence was that the only conversation he had with K.S. at this time related to the wiring instructions which he explained (but not to K.S.) on the basis that the firm's accountant had explained to him that he should not put non-client funds through the firm's trust account.

[37] The Respondent's version of what happened is that he told his uncle about the urgent need for the

additional US $200,000 to keep the deal alive and that, if the words " let's not let this deal die" were spoken to K.S. at all, they were spoken by the uncle, not by him.

[38] In total, then, an aggregate of $593,650 (Can) of K.S.'s funds were transferred to Mr. P.'s account in Montreal.

[39] Those funds have disappeared. According to a summary of transactions in Mr. P.'s account that was admitted into evidence without objection, they were apparently used, between August 15 and September 14, 2005, to make payments from that account to, among others, credit card companies (some $55,000), an automobile dealer ($290,000); a clothing merchant and to Mr. P.

[40] We have already referred to the fact[12] that in addition to any legal fees that he might earn in connection with the scheme, the Respondent was to receive some form of bonus or compensation in relation to it. The evidence of the Respondent's uncle was that he, too, was to receive some form of commission or bonus, but it is not clear whether this was to be a share in the Respondent's commission or directly, and in both cases the evidence does not reveal who was to pay the bonus, the basis of its calculation or what would create an entitlement to receive it.

Our conclusions about matters of fact

[41] Considering the evidence as a whole, and bearing in mind the principles set out in paragraph [2], we have reached the following conclusions as to matters of fact:

(a) The Respondent did solicit funds from K.S., both in relation to the latter's initial investment of US $300,000 and to the further US $200,000. In each case the solicitation was made either directly by the Respondent or indirectly through his uncle W.E. " Solicit" is a broad, not a narrow and technical concept. It is not, in our view, limited to a direct request for funds but extends, without any distortion of language, to include the creation of an environment, atmosphere or context in which someone is encouraged, by reassurances about the safety and security of funds, intimations of the possibility of significant returns within a short period of time and by other elements designed to give comfort, to part with his or her funds. In this case, the Respondent's description or intimation of a government connection, the emphasis on confidentiality, the assurance of safety and security if the law firm was used as a conduit, the possibility of significant returns and the assurance of a full refund if things went wrong and, indeed, the general vagueness of the proposed scheme, all taken together, in our view constituted a " solicitation" . [13]

(b) The Respondent did allow his status as a lawyer to be used to encourage K.S. to invest funds. It is clear beyond doubt that K.S. knew in August and September 2005 that the Respondent was a lawyer. He was the person who, from K.S.'s point of view, was the source of all material information about the project. We have little doubt that the fact that he was a lawyer was part of the total mix of elements that created the " solicitation" and encouraged K.S. to invest. Any other conclusion, in our view, would be a denial of common sense and perverse. It is also our conclusion, however, that the Law Society has not discharged the onus resting on it of establishing that Respondent left K.S. with the impression that he was acting for K.S. as *his* counsel. This is a much narrower proposition than the former. As we have noted, the Respondent claims that he specifically advised K.S. that he was not acting as *his* lawyer. K.S.'s recollection of facts and events is, we are bound to say, somewhat unsure, and his evidence on this particular point was vague. There is a difference, but no inconsistency, between concluding, on the one hand, that the Law Society has discharged the onus of establishing that the Respondent's status as a lawyer was in the circumstances influential on K.S.'s mind and at the

same time concluding, on the other, that the Respondent did not leave K.S. with the impression that he was acting *as* K.S.'s *lawyer*.

(c) The Respondent did personally assure K.S. that his funds would not be put at risk. Taking together the effect of the Respondent's words and actions, our view is that this is precisely what he did.

(d) The Respondent did allow US $300,000 of K.S.'s funds to be deposited into the trust account of the law firm. He did cause those funds to be released out of the law firm's trust account into a bank account over which he had no control, without obtaining any security for those funds. He did allow a further US $200,000 of K.S.'s funds to be deposited into the general account of the law firm in which he was practising; he did cause the release of those further funds out of the law firm's general account into a bank account over which he had no control without obtaining any security for those funds; and he did thereby put those funds at substantial risk.

(e) The Respondent made no, or no serious or relevant enquiries, to obtain any information or confirm the information that he was given, about the source of the funds that were allegedly to be administered by the project manager; about the actual amount of money that was being made available; about the terms of reference under which the funds were to be disbursed; about the amount of the compensation to be earned by the project manager; about whether the project manager would itself have funds to invest and if so, what restrictions, if any, would apply to such investments.

(f) The Respondent made no, or no serious or relevant enquiries, as to the reasons for the dramatic reduction in the amount of funds required by the proposed project management company for the purposes of demonstrating financial stability and capability or as to what the ultimate disposition of those funds was to be if the project management company was successful in its attempt to obtain a management contract.

(g) The Respondent made no, or no serious or relevant enquiries, to determine the identity, status or authority of Mr. P., nor did he make any, or any serious or relevant enquiries, to confirm the claim that Mr. P.'s bank account was a nominee account for the Bank of Canada or some other federal entity or to determine the authenticity and legitimacy of the proposed investment scheme generally. He relied for his confidence in the truth and reliability of what he was told by Mr. P. upon the facts that Mr. P. appeared to be a friend of J.S., that J.S. was apparently going to have some seemingly undefined role in the proposed project management company and his long standing trust and confidence in and relationship to J.S.

(h) At least as early as March 2005, and in any event in August and September of that year, the Respondent knew of the concerns of the Law Society's insurer and its investigative staff about the legitimacy of the scheme and the risk that it created both for the Respondent and others. He had been told of the various characteristics, several of which appeared to be present in relation to the proposed investment, that should put one on one's guard in relation to such schemes and of the risks of inadvertently becoming a dupe of an unscrupulous client. He had been specifically advised and provided by the Law Society with a copy of Chapter 4, Ruling 6 of the *Professional Conduct Handbook* together with the footnote to that Ruling.

(i) The evidence, taken as a whole, leads us irresistibly to the conclusion that the entire investment scheme was a scam and a fraud.

The Positions of the Law Society and of the Respondent and our Verdict

[42] The Law Society does not in these proceedings say that the Respondent himself committed any fraud on K.S., and the evidence that we heard certainly does not permit us to come to that conclusion. It does say, however, that the Respondent knew that the investment scheme was fraudulent. The Respondent denies this. On the evidence that we heard we have concluded that the Law Society did not make out this case.

[43] The Law Society also says, in the alternative, that at the time the Respondent did, or omitted to do, the acts that we have summarized in paragraph [41], he was either:

(a) wilfully blind to the fact that the investment scheme was fraudulent, or

(b) reckless as to whether the scheme was fraudulent and that the funds would be at risk, or

(c) grossly negligent in circumstances that required an inquiry and investigation by him into the validity and propriety of the investment scheme,

and so engaged in activity that he knew or ought to have known assisted in dishonesty, crime or fraud, contrary to Chapter 4, Rule 6 of the *Professional Conduct Handbook*.

[44] The Respondent disputes each of these contentions.

[45] The proposition that the Respondent was " wilfully blind to the fact that the investment scheme was fraudulent" is oddly framed. As drafted, it requires us to find both that the investment scheme was fraudulent and that the Respondent was wilfully blind to this fact. We have already found that the investment scheme was fraudulent.

[46] Was the Respondent " wilfully blind" to that fact?

[47] Counsel for the Law Society referred us to a number of authorities in which the concept of " wilful blindness" is discussed, in particular *Sansregret v. The Queen* (1985) 18 C.C.C. (3d) 223 (S.C.C.), in which McIntyre J. quoted with approval a passage from Glanville Williams *Criminal Law: The General Part* 2nd ed. (1961) 159 that " a court can properly find wilful blindness only where it can almost be said that the defendant actually knew. He suspected the fact; he realized its probability; but he refrained from obtaining the final confirmation ..." . [14]

[48] Applying this test we have concluded that it cannot " almost be said that [the Respondent] actually knew. He suspected the fact [that the scheme was fraudulent]; he realized its probability, but he refrained from obtaining the final confirmation."

[49] Was the Respondent " reckless as to whether the scheme was fraudulent and that the funds would be at risk" or " grossly negligent in circumstances which required an inquiry and investigation by him into the validity and propriety of the investment scheme" ?

[50] The relationship between " recklessness" and " gross negligence" has been the subject of much discussion. We have nothing helpful to add to that discussion. Our job is to answer a relatively straightforward question. It was posed, correctly we believe, by the panel in *Martin (supra)* at paragraph [140]: " Did the Respondent act in a manner that was a marked departure from the standard expected of a competent solicitor acting in the course of his profession?" This question is asked in the context of the Respondent's dealings with K.S.

[51] Our answer to that question is unequivocally " yes" . We hold that view for several reasons:

(a) the " investment scheme" as described to the Respondent and Mr. P., had features that were so unusual that we think that any competent solicitor would have made enquiries as to its authenticity and legitimacy before involving himself in it or making representations to K.S. about it, its worthiness and the security of his funds. Among those features were:

i) the alleged involvement of an agency of the Government of Canada in making funds available to " worthy" projects, the nature of which was not known, on terms that were not clear;

ii) the remarkable reduction in the funds required by the " project manager" to " demonstrate financial stability and capability" from approximately $16 million to approximately $6 million;

iii) the suggestion that the " project manager" would be in a position to earn fees and investment returns, without any idea as to what those fees were or how the investment returns would be earned;

iv) the suggestion that investors were guaranteed against loss in certain circumstances and that the potential existed to double their money within a short time;

v) the fact that the scheme was introduced to the Respondent by Mr. P., whom he had not previously met and with whom he had no prior association and about whose status, authority or credibility he knew virtually nothing. The Respondent made no enquiries about any of these matters despite the fact that the fund that was to be administered by the project manager was alleged to be " in excess of $100 million" and the investment required was several millions of dollars. In our view a competent solicitor, although perhaps his suspicions were not aroused by these facts, would in the circumstances have made inquiries into all these matters;

(b) the Respondent relied almost entirely on his friendship with and admiration for J.S. and the fact that he was introduced to Mr. P. in J.S.'s home and the two appeared to have a prior association, from which the Respondent deduced that Mr. P. must be someone of integrity and the scheme legitimate. There is no evidence that the Respondent made any inquiries of J.S. to confirm his impressions, and it is significant in our view that neither the Respondent nor J.B. testified that J.S. made any representations about the status or integrity of Mr. P. The only " independent" verification of any of the facts came from a second-hand account received from J.B. of a telephone conversation with an unidentified official of the Bank of Montreal and a curious response to an inquiry about delays in the issuance of visas that the Respondent considered indicated that Mr. P. had a security clearance " at the highest level" . It was never made clear to us why such a security clearance warranted the conclusion that the investment scheme was bona fide or that Mr. P. was who he said he was and held the position that he appeared to hold (although nobody appeared quite clear as to just what that position was). We do not think that a reasonably competent solicitor would have relied on any of these sources for his confidence in the legitimacy of an investment scheme involving the amounts that this one was said to involve, especially in circumstances in which, some months before, he had been warned by the Law Society of the potential dangers of the scheme and of the importance, as outlined in Chapter 4, Ruling 6 of the *Professional Conduct Handbook*, of taking steps to ensure that he did not become the unwitting dupe of others and elected to do nothing;

(c) no reasonably competent solicitor would have given K.S. the assurances about the safety of his funds that the Respondent gave, in circumstances in which he knew next to nothing about the investment scheme, Mr. P. or his alleged " nominee" bank account and had received the caution that he was given by the Law Society;

(d) no reasonably competent solicitor would have instructed K.S., with whom he claimed not to have a solicitor-client relationship, to send his funds to the Respondent's law firm's trust account, as was the case with the initial US $300,000 and then, with respect to the subsequent US $200,000, to send them into his firm's *general* account; and

(e) no reasonably competent solicitor would, in our opinion, have received funds into *any of* the law firm's accounts in the circumstances in which K.S. was instructed to forward those funds, nor would such a solicitor have forwarded those funds into the hands of a third party without some assurance of their safety and security and their use for the purposes intended.

[52] Considering these elements as a whole, we are in little doubt that the Respondent's conduct was a marked departure from the standard expected of a competent solicitor acting in the course of his profession. In March 2005, he was told by the Law Society of the risks that seemed to be inherent in the investment scheme, and so he was, or ought to have been, aware of the need to be circumspect and for further inquiry. Despite this, he did not make any enquiries and took no precautions to minimize the risk. Instead, he gave assurances to K.S. as to the safety of his funds and otherwise contributed to the risk by the manner in which he dealt with those funds. In our view, no reasonably competent and prudent solicitor would in the circumstances have behaved in this fashion, and it was reckless of the Respondent to do so. He should have made inquiries but did not, preferring instead to rely essentially upon his admiration for J.S. We heard nothing from the Respondent or any other witness that came close to explaining what J.S.'s reputation had to do with the investment scheme or why it was reasonable for the Respondent to infer from that reputation anything about Mr. P., the investment scheme or its legitimacy, or that provided a basis for the reassurances that he gave to K.S.

[53] We have little difficulty in concluding that the Respondent was reckless and that his conduct amounted, therefore, to professional misconduct. While that is sufficient to dispose of this matter, we should add that in our opinion the Respondent was also guilty of gross culpable negligence as that expression was used in *Martin (supra).*

[54] We have not been convinced that the Respondent personally engaged in any fraudulent conduct or was otherwise dishonest. We are completely mystified about why he conducted himself as he did - whether because of astonishing naï veté , an excess of zeal, simple inattention, an anxiety to help and support old friends and his client, J.B., or the prospect of personal riches. Whatever the explanation, we are in no doubt that he ought to have known that his involvement assisted in a fraudulent and/or dishonest activity, contrary to Chapter 4, Rule 6 of the *Professional Conduct Handbook* and, for the reasons we have given, his conduct constituted " professional misconduct" .

[1] J.S.'s wife testified before us and confirmed the closeness of the family's relationship to the Respondent for whom, she said, she has the highest and most affectionate regard. J.S. did not give evidence.

[2] There is no direct evidence of this or, if it happened, when. It is referred to in several documents bearing dates in late January or early February 2005.

[3] So far as the evidence goes, there is nothing to indicate that this " undertaking and commitment" was ever honoured.

[4] This is obviously an error though nothing turns on it.

[5] On August 26, 2005, in a letter addressed to J.B., the Respondent confirmed that " the terms and conditions set out in my Statutory Declaration above captioned still remain in full force and effect as of the date of this letter."

[6] It is possible that, for reasons that are not material, this may have been a misunderstanding. It is repeated in the letter of Ms. George referred to in the next paragraph.

[7] It is agreed that this is a reference to J.S.

[8] J.B. testified that he had sent something close to US $1 million to Mr. P.'s account in Montreal. We should add that there was no evidence of any funds being forwarded to this account by J.S. or the company, WCR.

[9] There was some suggestion that the Respondent may have prepared some documentation in relation to this transaction, but the evidence on this is vague.

[10] Nobody seems to have had any particular understanding of the meaning of " success" .

[11] It is not clear whether this amount was suggested or indicated by K.S. or by the Respondent.

[12] See paragraph 5 of the Statement of Agreed Facts quoted above, paragraph [19].

[13] We think that the (undisclosed) economic interest of both the Respondent and W.E. in the project - see above, paragraph [40] - lends colour to our conclusion about this.

[14] Counsel for the Law Society also referred us to the lengthy reasons for decision of a Hearing Panel of the *Law Society of Upper Canada v. Kazman* [2005] L.S.D.D. No. 89, but we did not find this especially helpful.