

2006 LSBC 36

Report issued: October 12, 2006

Citation issued: March 6, 2006

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

Gregory Charles Cranston

Respondent

Decision of the Hearing Panel

Hearing date: July 21, 2006

Panel: G. Glen Ridgway, Q.C., Kathryn Berge, Q.C. **Concurring Decision:** Gordon Turriff, Q.C.

Counsel for the Law Society: Jaia Rai

Counsel for the Respondent: Christopher Hinkson, Q.C.

Background

[1] On March 6, 2006, a citation was issued against the Respondent pursuant to the *Legal Profession Act* and Rule 4-13 of the Law Society Rules by the Executive Director of the Law Society of British Columbia pursuant to the direction of the Chair of the Discipline Committee. The citation directed that this Panel inquire into the Respondent's conduct as follows:

1. You affixed your signature as a witness to the signing of a Transport Canada Bill of Sale dated November 1, 2004 when the document had already been completed and signed outside your presence.

[2] The requirements for service of this citation upon the Respondent, pursuant to Rule 4-15, were waived by the Respondent.

Agreed Statement of Facts

[3] Counsel submitted an Agreed Statement of Facts, which was filed as Exhibit 2. The Agreed Statement of Facts was as follows. (References in the original to appendices have been omitted and the paragraphs consequently renumbered.)

1. Gregory Charles Cranston was called to the Bar in British Columbia on July 13, 1977.

2. Mr. Cranston is and was at all material times a practising lawyer with an office in Vancouver, British Columbia.

3. Prior to November 1, 2004, Mr. Cranston had represented an individual named T.S. and, as a result of his relationship with T.S., Mr. Cranston had met and spoken with T.S.'s father, A.S.

4. A.S. is a wooden vessel designer and repairer. Prior to November 1, 2004, A.S. was the sole registered owner of an antique sailing vessel called " P" that he purchased in 1991 (the " Vessel").
5. Prior to November 1, 2004, A.S. was involved in a dispute with his daughter and two sons, T.S. and B. S., concerning a variety of matters. A.S. retained Mr. P. of the law firm, " B.C." , and in early November 2004 instructed Mr. P. to commence a lawsuit against his two sons and their company. The Writ of Summons and Statement of Claim (in respect of this action) were filed on November 12, 2004. A Statement of Defence and Counterclaim (in respect of that action) was filed on December 7, 2004.
6. Attached to the Statement of Agreed Facts was a copy of a Transport Canada Bill of Sale dated November 1, 2004 purportedly signed in Richmond, British Columbia, by A.S. as registered owner (the " Bill of Sale").
7. On November 1, 2004, Mr. Cranston met with B.S. at his office at which time B.S. presented the Bill of Sale to Mr. Cranston and Mr. Cranston affixed his signature on the Bill of Sale in a location intended for a witness to the signature of the registered owner, A.S.
8. Mr. Cranston signed the Bill of Sale on November 1, 2004 when A.S. was not present before him and A.S. did not sign the Bill of Sale before him.
9. Mr. Cranston signed the Bill of Sale knowing it had already been completed and signed outside his presence.
10. Mr. Cranston knew that A.S.'s signature appeared nowhere on the Bill of Sale.
11. On November 1, 2004, A.S. was in Ucluelet, B.C.
12. The Bill of Sale purported to transfer A.S.'s interest in the Vessel to his son, T.S.
13. T.S. tendered the Bill of Sale and swore a declaration that he was entitled to be the registered owner of the Vessel.
14. A printout from the Ship's Registration Information Systems indicated the transfer of the Vessel from A.S. to T.S. on November 2, 2004 and identified T.S. as the registered owner of the Vessel as of November 5, 2004.
15. On November 18, 2004, A.S.'s daughter's common law spouse, G.S., arrived at his business premises with an RCMP officer in order to remove the Vessel. A.S. was shown a copy of the Bill of Sale at that time for the first time.
16. On the same date, A.S. contacted Mr. P. who advised the RCMP officer of A.S.'s ongoing dispute with his sons and suggested that the person who had arranged to take the Vessel away be told that he not do so until matters were clarified.
17. Mr. P. wrote to Mr. Cranston on November 18, 2004 requesting information concerning the circumstances surrounding the execution of the Bill of Sale.

18. On November 19, 2004, A.S. commenced a second action in the Supreme Court of British Columbia against T.S. and the Vessel. The Vessel was subsequently arrested to prevent any person from removing it from A.S.'s premises. A Writ of Summons and Statement of Claim (in respect of the second action) was filed on November 19, 2004. A Warrant concerning the arrest of the Vessel was issued November 19, 2004. A Statement of Defence (in respect of this second action) was filed on December 9, 2004.

19. Mr. Cranston left two voice mail messages for Mr. P. on November 20, 2004 and November 22, 2004 responding to Mr. P.'s letter dated November 18, 2004. The following are summaries of the original exhibited voice mail transcripts:

(a) on November 20, 2004, Mr. Cranston's voice mail confirmed that Mr. P.'s client did not sign anything in front of Mr. Cranston;

(b) on November 22, 2004, Mr. Cranston's voice mail explained his firm would not be acting on behalf of T.S., that Mr. Cranston had understood that the document was being signed as a family joke, and that he did not realize that the boat was going to actually be transferred. Mr. Cranston went on to explain a suggested settlement on behalf of the transferee, T.S.

20. Mr. Cranston wrote to Mr. P. on November 26, 2004 providing a further response. The letter said " ...As I had advised by telephone, I did not see the plaintiff sign the document. I believed that one of the defendants signed the document and further, I thought the document was a practical joke..." .

21. To date, neither of the Supreme Court actions commenced by A.S. has resolved.

22. Mr. P. sent a letter of complaint to the Law Society of British Columbia dated November 19, 2004. The complaint was subsequently investigated and on December 8, 2005 the Discipline Committee directed that a citation be issued against Mr. Cranston.

23. Mr. Cranston admits that he affixed his signature as a witness to the signing of the Bill of Sale when the document had already been completed and signed outside his presence, as alleged in the schedule to the citation.

24. Mr. Cranston further admits that his conduct in doing so amounts to professional misconduct.

Verdict

[4] On the basis of the Agreed Statement of Facts, the admission of the Respondent that his conduct amounts to professional misconduct, and the submissions of counsel for the Law Society and of the Respondent, the Panel finds that the Respondent affixed his signature as a witness to the signing of a Transport Canada Bill of Sale dated November 1, 2004 when the document had already been completed and signed outside of his presence, as stated in Count 1 of the Schedule of the citation.

[5] We also find that the failure on Count 1 was professional misconduct as it reflects a marked departure from the conduct that the Law Society expects of its members. Affixing a signature as a witness on a legal document when a member has not in fact witnessed that document was held to be professional misconduct in *Law Society of BC v. Bennett*, Discipline Case Digest 85/4, penalty heard December 5, 1984 and in *Law Society of BC v. McLean*, Discipline Case Digest 93/12, hearing report dated April 14,

1993. It is manifestly in the public interest that a lawyer's signature as witness to a legal document must be viable evidence of the fact that the member indeed witnessed the affixed signature.

[6] Therefore, in the Panel's view, the Respondent's admission of professional misconduct is justified, and the Panel accepts the admission and finds the Respondent guilty of professional misconduct.

Penalty

[7] The Respondent has consented to specified disciplinary penalty.

[8] Having heard submissions from counsel for the Law Society and the Respondent, the Panel accepts the proposed disciplinary action as it meets the criteria for sentencing set out in *Law Society of BC v. Ogilvie*, [1999] LSBC 17. The Panel has considered the potential aggravating and mitigating factors in determining the penalty to be imposed. In respect of the penalty, the Panel accepts the penalty proposed by the member and counsel for the Law Society and orders that the Respondent:

- (a) be reprimanded;
- (b) pay a fine in the amount of \$5,000.00;
- (c) pay costs in the amount of \$3,500.00;
- (d) pay both fine and costs within three months.

[9] The Executive Director is instructed to record the Respondent's admission on the Respondent's Professional Conduct Record, to impose the disciplinary action proposed by the Respondent and accepted by the Panel and to inform the Respondent and the complainant of the disposition.

[10] There will be publication of this decision in the normal course.

Concurring Decision of Gordon Turriff, Q.C.

[11] I agree with the decision reached by my colleagues. I only add this: it may appear incongruous that the Respondent should be made to pay a fine of \$5,000 for an act of foolishness when, recently, lawyers who have breached undertakings (which are solemn promises indispensable for the achievement of efficiency in many aspects of the practice of law) have been made to pay fines in substantially smaller amounts. As I see it, the fine in the present case is appropriate in all of the circumstances. The question of whether a fine in a lower amount for a breach of undertaking can be supported as being in the public interest cannot be addressed here.