

2006 : No. 4 September-October

Richard Luke Coglon

West Vancouver, BC

Called to the bar: June 12, 1987

Discipline hearing : April 23-24, 2001 and November 3 and 9, 2005

Panel : Richard S. Margetts, QC, Chair, Peter J. Keighley, QC and Russell S. Tretiak, QC

Bencher Review : July 4, 2002

Review Panel : Richard C. Gibbs, QC, Chair, Ralston S. Alexander, QC, G. Glen Ridgway, QC, G. Ronald Toews, QC, Anne K. Wallace, Gordon Turriff, QC and Ross D. Tunnicliffe

Reports issued : October 4, 2001 (indexed as 2001 LSBC 17), December 31, 2002 (indexed as 2002 LSBC 21), December 31, 2002 (indexed as 2003 LSBC 01) and April 25, 2006 (indexed as 2006 LSBC 14)

Counsel : Mark L. Skwarok, Michael L. Bromm and Todd R. Follett for the Law Society; Peter Leask, QC, William S. Berardino, QC and Pamela M. Cyr for Mr. Coglon

Facts

Mr. Coglon accepted instructions from Mr. L to incorporate or obtain another company for the purpose of purchasing shares in Company X, which Mr. Coglon also represented. In addition, Mr. Coglon was to keep this purchase secret from Company X.

Mr. Coglon then continued his legal representation even after his relatives, through two other companies, had purchased approximately one quarter of the shares in Company X.

Verdict of hearing panel

The hearing panel found Mr. Coglon was motivated, not by greed, but by a desire to assist Mr. L, who was also his father-in-law, in the promotion of a project that had the potential to benefit many. It concluded Mr. Coglon's conduct might have been foolish or negligent, but did not amount to professional misconduct.

The panel also concluded Mr. Coglon had breached two provisions of the *Professional Conduct Handbook*. The first was Chapter 6, Rule 1, in that there was a conflict between the duty of loyalty Mr. Coglon owed his two clients, Company X and Mr. L. The second was a breach of Chapter 7, Rule 1, when Mr. Coglon continued his legal representation despite his relatives' financial interest in Company X.

Bencher review

On October 18, 2001 the Law Society asked the Benchers to review the decision of the hearing panel, pursuant to section 47 of the *Legal Profession Act*.

On December 31, 2002, the review panel found that the conflicts of interest Mr. Coglon committed were serious, flagrant, obvious and indefensible. It said in situations of conflict, the problems come from acting with compromised loyalties. And, in this case, because his loyalties were divided, Mr. Coglon could not discharge his duty of candour to his other clients. In addition, Mr. Coglon was in a hopelessly conflicted position as the investments of his relatives could be expected to affect his professional judgement.

The majority of Benchers on the review panel determined the duty of loyalty is one of the core values of the

legal profession, perhaps *the* core value.

The panel unanimously concluded Mr. Coglon had in fact committed professional misconduct.

Appeal to BC Court of Appeal

Mr. Coglon filed an appeal to the BC Court of Appeal on January 30, 2003. His penalty hearing was held in abeyance pending the disposition of the appeal. Mr. Coglon subsequently abandoned his appeal on May 26, 2005.

Penalty

The hearing panel observed that no actual financial loss arose from Mr. Coglon's conduct, and that the project was ultimately a success. It noted, however, that when dealing with issues of conflict, the panel must also consider the possibility of injury to a party even if no actual injury occurs.

Mr. Coglon acknowledged he entered into obvious conflicts. He testified he had suffered personally and professionally as a result of the publicity surrounding the disciplinary proceedings. Mr. Coglon said ultimately his marriage ended and his relationship with his father-in-law, Mr. L, had become strained. The panel determined that, in light of those impacts, specific deterrence was not a significant factor; however, the seriousness of the conflicts warranted consideration of general deterrence.

The panel determined lawyers who place themselves in a position of conflict can never be sure in advance whether their actions will result in damage. The conflict avoidance provisions in the *Professional Conflict Handbook* are not simply remedial; they are preventative for the simple reason that the only safe way to deal with conflicts is to avoid them. A lawyer must not be allowed to gauge the seriousness of a conflict with reference solely to the harm it may cause. That would turn the avoidance of conflict into a game of probability in which lawyers play the odds, weighing potential benefits and liabilities in each conflict as it arises.

On April 25, 2006 the hearing panel ordered that Mr. Coglon:

1. be suspended for one month commencing May 1, 2006; and
2. pay costs of \$20,000 prior to his reinstatement.