2007 LSBC 04
Report issued: January 12, 2007
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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 Penalty

Hearing date: September 20, 2006

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

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

Background

[1] The citation against the Respondent arose out of his involvement in an investment scheme in which, it was alleged, he:

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

b) allowed his 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 the Respondent was 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 he was then practising;

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 he 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 he was practising; and

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 Mr. Edwards had no control without obtaining any security for those funds, thereby putting those funds at substantial risk;

when he either knew or was wilfully blind to the fact that the investment scheme was fraudulent, or was reckless as to whether the scheme was fraudulent and that the funds would be at risk, or was grossly negligent in circumstances which required an inquiry and investigation by him into the validity and propriety of the investment scheme.

[2] The Law Society alleged that in acting in the manner in which he did, the Respondent 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*.

[3] The facts are fully set out in our decision on Facts and Verdict issued on June 28, 2006 (2006 LSBC 27) (the " Earlier Decision").

[4] In the Earlier Decision, we concluded that:

(a) the investment scheme referred to was " a scam and a fraud" ; and

(b) Mr. Edwards took each of the actions described in paragraph [1] (a) to (g) above.

[5] We further concluded that, in conducting himself as he did in the circumstances, the Respondent acted in a manner that was a marked departure from the standard expected of a competent solicitor acting in the course of his profession and so was reckless. In this connection we found that:

(a) the investment scheme had features that were so unusual that any competent solicitor would have made inquiries as to its authenticity and legitimacy before involving himself in it or making representations to K.S. concerning the safety and security of his funds; and

(b) the Respondent made no, or no serious or relevant inquiries about the features of the investment scheme that were strongly suggestive of a scam, despite having been warned by representatives of the Law Society that, in their view, it exhibited a number of those features, preferring instead to base his confidence that it was not a scam upon sources that no reasonably competent solicitor would have relied upon in the circumstances.

[6] In the result, we found that the Respondent ought to have known that his involvement in the scheme assisted in a dishonest activity contrary to Chapter 4, Rule 6 of the *Professional Conduct Handbook*, and for the reasons we gave, his conduct constituted " professional misconduct" .

[7] These reasons, accordingly, are addressed to penalty.

[8] Counsel for the Law Society invited us to consider " whether the Respondent remains fit to be a barrister and solicitor in light of the evidence and [our] findings and the Respondent's discipline history." He submitted that if our view is that disbarment is not appropriate, a " lengthy period of suspension" is warranted.

[9] The primary focus of the *Legal Profession Act* is the protection of the public interest. The imposition of disciplinary sanctions is intended, therefore, to ensure that the public is protected from acts of professional misconduct. Section 38(5) of the *Act* sets out a range of sanctions, from a reprimand to disbarment, following a determination, such as that which we have made, that a member has been guilty of professional misconduct.

[10] Having considered the facts, the statutory provisions and the other matters that the jurisprudence indicates are relevant, we have concluded that the Respondent should be disbarred.

[11] In *Law Society of BC v. Ogilvie,* [1999] LSBC 17, the hearing panel set out what has since become generally accepted as a useful, albeit not exhaustive, list of considerations to be taken into account in assessing an appropriate penalty. Not all of them will be relevant in all cases; and in some cases other factors may require consideration. We deal below with the factors identified in *Ogilvie* that we think are relevant in this case.

The nature and gravity of the conduct proven

[12] In short, the Respondent, having been specifically warned by representatives of the Law Society that the scheme that he was involved in, or otherwise facilitated, had all the hallmarks of a scam, failed to make any serious or relevant inquiries as to the *bona fides* of the instigators of the scheme or what its essential components were, and used his position as a lawyer, or allowed it to be used, to give credibility to the scheme; he encouraged K.S. to invest in the scheme and facilitated the loss of the substantial funds that K.S. entrusted to him. In all of these, and in other respects related to the scheme, the Respondent behaved recklessly and in a manner that was a marked departure from the standard expected of a competent solicitor acting in the course of his profession. 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.*

The Respondent's Experience and Record

[13] The Respondent was called to the Bar in May, 1972 and practised continuously as a sole practitioner until December 31, 1994 when his membership in the Law Society ceased for non-payment of fees.

[14] Earlier, in 1994, the Respondent was cited for failing to meet his financial obligations in relation to his practice by failing to pay certain accounts rendered to him; and for failing to report an unsatisfied judgment obtained against him in respect of one of those accounts. He was reprimanded. The hearing panel at that time described some facts eerily and disturbingly similar in a number of respects to those that have given rise to the present proceedings:

> During the period of time relevant to the Citation, the Member was overwhelmed by financial problems. He had been winding down the volume of his practice on the expectation of receiving commissions worth " a number of millions of dollars" relative to a business transaction. The transaction was an international one, and one of the Member's partners in the transaction was an Iraqi who had held a high ranking position in Iraq but had left Iraq when the Iraq-Iran war began. He had advised Sadam [sic] Hussein against entering the war with Iran and sought (and apparently obtained) diplomatic immunity in the United States.
>
> The Member's commissions had been paid into the United States Treasury for distribution in the spring of 1990. The Iraqi connection resulted in a freeze on those funds when Iraq invaded Kuwait, commencing the Gulf War or " Desert Storm" .

[15] In 1995 the Respondent was again cited for failure to pay a practice debt in circumstances in which he had, on several occasions, expressly promised the creditor that he would pay it. The hearing panel, in a decision dated July 31, 1995, referred to the fact that the Respondent was, at the time, undergoing fairly severe financial difficulties and described his conduct in expressly promising to pay the account, as " reckless" . Having regard to all of the surrounding circumstances, including the Respondent's then current financial difficulties, the hearing panel ordered that he be reprimanded.

[16] At all events, in 1998 the Respondent applied for reinstatement. The hearing panel on his

application noted, among other things, that " by 1990 he was in financial difficulties, related not to his practice, but to what might be characterized as disastrous investments in petroleum exploration and real estate. The investments had been made with borrowed money, at least in part . . ." . Reinstatement was granted, effective August 19, 1999, on certain conditions. Upon reinstatement the Respondent became a non-practising member. On December 31, 2000, he once again ceased to be a member for non-payment of fees.

[17] One of the conditions imposed on the Respondent's reinstatement in August 1999 was that he submit to a Practice Review within one year of commencing active practice. It seems that such a review was conducted under the auspices of the Practice Standards Committee on March 7, 2003. One of the recommendations of the practice reviewer was that the Respondent " confine the time spent on your business interests to time outside of regular office hours . . ." . At a meeting held on July 10, 2003, the Practice Standards Committee, after expressing concern about the amount of time that the Respondent seemed to have been devoting to " business matters" , approved the recommendations of the practice reviewer.

[18] The Respondent seems to have resumed active practice some time in 2003, and continued to practise until September 16, 2005 when, in connection with the matters that are the subject of the present proceeding, he was suspended on the ground that it had been established, on a balance of probabilities, that " allowing the Respondent to continue in the practice of law would be dangerous or harmful to the public or the Respondent's clients."

[19] The Respondent is far from inexperienced. He has described himself as a " senior trial lawyer" [Earlier Decision, paragraph 16]. The facts of the present matter, considered in the context of this history, suggest that, despite his experience: (a) he is either astonishingly naive or irresistibly attracted to investment schemes that offer the prospect (for him and others) of growing rich " beyond the dreams of avarice" ; and (b) he has a propensity to behave recklessly, heedless of the best interests of others or, indeed, his own.

Impact of the Respondent's Behaviour on K.S.

[20] There is no dispute about this. K.S., who is not a young man, has lost US$500,000, although this must be offset to some degree by the fact that the lawsuit that he commenced against the Respondent has been settled by a payment of approximately $225,000 (Canadian).

Advantage to the Respondent

[21] The evidence was 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." [Earlier Decision, paragraph 40] It is unclear whether the Respondent in fact received either legal fees or any bonus or other compensation.

Acknowledgement of Misconduct

[22] We have already noted that the Respondent ignored the warnings given to him by representatives of the Law Society that the investment scheme had all the hallmarks of a scam. He continued throughout to believe, or at least to maintain, that it was legitimate even though, as we also found [Earlier Decision, paragraph 41(e)] he did not seem to have any clear understanding of key components of the scheme and

made no serious or relevant inquiries to satisfy himself as to its legitimacy, preferring instead to rely on the most tenuous (and highly unusual) matters as evidence of its authenticity [Earlier Decision, paragraph 51]. It was not until he was confronted at the hearing before us with what seemed to be irrefutable evidence of the fraudulent character of the entire undertaking, that the Respondent seemed to concede the possibility that it was a racket, albeit reluctantly, and at the same time insisting on his own good faith. The steps that he took to mitigate the consequences of his conduct were neither significant nor timely.

Mitigating Circumstances

[23] In our view, there are none.

Possibility of Remediation or Rehabilitation

[24] There is nothing in the record that even hints at the possibility that the Respondent can be rehabilitated. On the contrary, the record suggests that past efforts in this direction have been conspicuously unsuccessful. There is no ground for optimism that a further effort in this direction is likely to be productive.

Public Confidence in the Integrity of the Legal Profession, General Deterrence and the Impact of Proposed Penalty upon the Respondent

[25] The consequences to the Respondent of our conclusion that he be disbarred are obvious and require no extended commentary from us. There is little doubt that any form of discipline other than a reprimand is virtually certain to have a near disastrous impact upon him. In fact, however, he has consistently been the author of his own misfortunes and they cannot therefore carry much weight in the balance against the need - indeed the Law Society's obligation - to take all steps necessary to ensure that public confidence in the legal profession is not undermined. *Cf. Law Society of Upper Canada v. Baksh,* [2004] L.S.D.D. No. 58.

Other Cases

[26] Counsel for the Law Society properly referred us to a number of other cases involving discipline of lawyers whose misconduct consisted of allowing themselves, knowingly or not, to become " dupes" . They included decisions emanating from several jurisdictions including British Columbia.

[27] From a penalty perspective, these cases are fact specific and, although we have some doubt as to their value as precedents, we note that in all but three of them the lawyer involved was suspended, or agreed to withdraw from practice, for periods ranging from three months to, in the case of *Law Society of BC v. Kenny,* Discipline Digest 1999, No. 3 - December, seven years. In the three cases, the outcome was a decision to disbar the lawyer. They are *Law Society of Upper Canada v. Adler,* [2005] L.S.D.D. No. 62*; Law Society of Upper Canada v. Baksh* (*supra*)*;* and *Law Society of BC v. Ogilvie,* Discipline Case Digest 99/25.

[28] *Kenny* was a case in which the respondent had agreed to perform services for a client - including acting as a trustee for investor funds and, as trustee, to hold certain bonds as security for investors' capital and profits - in connection with an investment. In this connection he was found to have committed breaches of his fiduciary obligations under these agreements by, in effect, disregarding the trust conditions under which he held the funds and misapplying them. The respondent entered into an undertaking not to apply for

reinstatement for seven years.

[29] In *Ogilvie* the panel disbarred a respondent who had " misappropriated more than $7,000 from various clients and, by the time he left practice, had failed to account to clients for sums in excess of $96,000" . In *Baksh*, a panel of the Law Society of Upper Canada disbarred a lawyer who was found to have committed professional misconduct in facilitating several schemes, over a period of three years, by which mortgage monies were obtained and disbursed under false pretences by falsely inflating property values. The respondent was not involved in the planning of the schemes, nor had he shared in the proceeds. The panel said:

> Bearing in mind the very serious consequences of the member's actions, and the fact that the main purpose of the penalty is not punishment but protection of the public, the Panel has concluded that the only appropriate penalty in these circumstances is that of disbarment.

[30] In the light of our findings of fact, the considerations that we have referred to and the decided cases that we have considered, we consider those observations entirely apposite to the circumstances here.

[31] Accordingly, our decision is that the appropriate penalty is disbarment, and we so order.

Costs

[32] The Law Society seeks an order that the Respondent pay the Society's costs on a full indemnity basis.

[33] In this connection, the following propositions are now well-established:

(a) the successful party, in this case the Law Society, is entitled to a full indemnity for its costs (*Law Society of BC v. McNabb,* [1999] LSBC 02); and

(b) the costs ordered must, as a whole, be reasonable (*Law Society of BC v. Basi*, 2005 LSBC 01).

[34] The Law Society has presented to us a draft Bill of Costs. We are satisfied that it has been prepared in accordance with the applicable provisions of the *Legal Profession Act* (section 46(1)) and the Law Society Rules (Rule 5-9(0.1) and (1)). The draft Bill of Costs covers, among other matters, the proceedings that, on September 16, 2005, resulted in the Respondent's suspension by a different panel of Benchers pursuant to section 39 of the *Legal Profession Act.* See paragraph [17] above.

[35] We are satisfied that, except in one respect, the draft Bill of Costs is appropriate and the items included in it are reasonable. The exception is a charge of $13,614.16 in respect of the Law Society audit. In our view, having reviewed the Audit Report and heard the evidence of the auditor, we consider that this is somewhat high and hence not reasonable. In our opinion this charge should be reduced to $10,000.

[36] The effect of that adjustment is to reduce the total of the draft Bill to $35,815.57. The Law Society is entitled to be indemnified by the Respondent in that amount, and we so order.

A corrigenda was issued on January 15, 2007, correcting the word " opposite" in paragraph [30] to " apposite" .