

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

Jonathan Lewis Oldroyd

Respondent

**Decision of the Hearing Panel
on Penalty**

Hearing date: May 30, 2007

Panel: G. Glen Ridgway, Q.C., Chair, Leon Getz, Q.C., Ronald S. Tindale

Counsel for the Law Society: Brian McKinley

No-one appearing on behalf of the Respondent

Background

[1] As set out in our Decision on Facts and Verdict issued January 17, 2007, the Panel determined that the Respondent was guilty of professional misconduct with respect to these items set out in the Schedule to the citation:

1. Wrongfully converted trust funds belonging to his clients T.M. and J.A.M., E.H.L.N., H.B., the R.T. Estate, and the R.P.W. Estate from his pooled trust account.
2. Misled another lawyer, William Randall, by letters dated February 9, 2004 and March 22, 2004, in which he indicated that the funds held for clients T.M. and J.A.M. remained in his trust account when he had previously disbursed those funds.
3. Breached an undertaking to another lawyer, James Pasuta. The undertaking was contained in a letter dated September 17, 2003 from Mr. Pasuta to the Respondent and required the Respondent to retain sufficient funds in trust from certain sale proceeds received by him on behalf of his client H.B. to satisfy obligations to the Canada Customs and Revenue Agency ("C.C.R.A.") and to obtain and provide to Mr. Pasuta a Clearance Certificate from the C.C.R.A. before releasing those funds. It is alleged that the Respondent breached that undertaking by releasing the funds without obtaining and providing a Clearance Certificate to Mr. Pasuta.

[2] The Panel further determined that the Respondent had breached the Rules of the Law Society in that he failed, contrary to Rule 4-43(2)(b) of the Law Society Rules, to produce his trust accounting records for the years 1995, 1996, 1997, 1998 and 1999 to a person designated to conduct an investigation of his books, records and accounts, when those records were required for the purpose of the investigation.

[3] The Respondent did not attend for the hearing on this phase of the proceedings, and he did not attend at the hearing respecting Facts and Verdict. The Law Society filed as Exhibit 1 an

acknowledgment by the Respondent's counsel of notification of this hearing, and we are satisfied that the Respondent had notice of such.

[4] The Law Society takes the position that the proper disposition of this matter is that the Respondent be disbarred. This Panel agrees.

[5] The funds misappropriated by the Respondent and referred to in paragraph 1 of the Schedule to the citation amount to \$666,894.68. His financial records concealed that misuse. Those funds have not been replaced. A custodian is in place over the Respondent's practice, and the practice is being wound up.

[6] The Respondent also misled another lawyer and breached an undertaking.

[7] The Law Society filed as Exhibit 3 in these proceedings the Professional Conduct Record of the Respondent, but there was little in that Record to assist this Panel.

[8] The authorities referred to by the Law Society on penalty are as follows:

1. *Law Society of BC v. Ogilvie*, Discipline Case Digest 99/25; [1999] LSBC 17
2. *Law Society of BC v. Peters*, Discipline Case Digest 00/05; [1999] LSBC 38;
3. *Law Society of BC v. Kierans*, Discipline Case Digest 00/4; [1999] LSBC 13
4. *Law Society of BC v. McGuire*, 2006 LSBC 20
5. *Law Society of BC v. Harder*, 2006 LSBC 48
6. *Law Society of BC v. Wirick*, Discipline Case Digest 03/05; [2002] LSBC 32
7. *Law Society of BC v. Hammond*, 2004 LSBC 32

[9] In *Ogilvie* (supra), the Panel, at paragraph 10, sets out the considerations in disciplinary dispositions and at paragraph 18 states:

The ultimate penalty of disbarment is reserved for those instances of misconduct of which it can be said that prohibition from practice is the only means by which the public can be protected from further acts of misconduct." This is such a case. There is nothing before the panel to suggest that any penalty, other than disbarment, will ensure that the public is protected from future acts of misconduct on the part of Mr. Ogilvie. Nothing divulged about the circumstances of the misconduct, or Mr. Ogilvie's personal circumstances, suggest that disbarment is inappropriate.

[10] Those comments with respect to Mr. Ogilvie apply, as well, to this Respondent. His conduct clearly justifies the penalty of disbarment, and we so order.

Costs

[11] The Law Society also seeks costs in the sum of \$124,703.61.

[12] It is appropriate that the costs of this process be borne by the party at fault and not the general membership. However, in saying that, the Panel had concerns about the amount of certain aspects of the expense items claimed and directs that the Respondent pay costs in the sum of \$124,000.00 forthwith.

[13] Should the Respondent require time to pay we will receive written submissions on this point.