

2007 LSBC 39

Report issued: August 31, 2007

Citation issued: June 28, 2006

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

Vance King Goulding

Respondent

Decision of the Hearing Panel on Penalty

Hearing date: July 26, 2007

Panel: G. Glen Ridgway, Q.C., Chair, William Jackson, Bruce A. LeRose, Q.C.

Counsel for the Law Society: Maureen S. Boyd

No-one appearing on behalf of the Respondent

Background

[1] On March 15, 2007, this Panel found that the Respondent had professionally misconducted himself in respect of six counts on a citation issued by the Law Society on June 26, 2006, as amended October 17, 2006 and March 14, 2007.

[2] In general terms, the Respondent failed to respond to various communications from the Law Society regarding a complaint by a client, H.R., failed to respond to the Law Society concerning scheduling of an unrelated Conduct Review, failed to answer inquiries concerning a Practice Review, failed to competently serve the client H.R., misappropriated funds of the client H.R., and failed to handle funds belonging to the client H.R. as required by the Law Society Rules.

[3] The Panel reconvened on July 26, 2007, to consider an appropriate penalty in the circumstances. The Respondent did not appear at the penalty hearing, although the Panel is satisfied from the filed affidavits of attempted service that Rule 10-1 concerning service has been satisfied.

Analysis

[4] In cases of misappropriation, the general principle is that disbarment is the appropriate penalty to protect the public, even if the possibility of recurrence is remote. This is required to protect the public's trust in the profession. This logic was adopted in *Law Society of BC v. Harder*, 2006 LSBC 48 at paragraph 9:

The seriousness of the misconduct is the prime determinant of the penalty imposed. In the most serious cases, the lawyer's right to practise will be terminated regardless of extenuating circumstances and the probability of recurrence. If a lawyer misappropriates a substantial sum of

clients' money, that lawyer's right to practise will almost certainly be determined, for the profession must protect the public against the possibility of recurrence of the misconduct, even if that possibility is remote. Any other result would undermine public trust in the profession. (McKenzie, *Lawyers and Ethics: Professional Responsibility and Discipline*, loose-leaf ed. (Toronto: Thomson Canada Ltd., 2005) at p. 26-1)

[5] In an earlier decision of *Law Society of BC v. Ogilvie* [1999] LSBC 17 at paragraph 18, the Panel stated:

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, suggests that disbarment is inappropriate.

[6] A Panel may decline to disbar where there is evidence that suggests that this penalty is not required to protect the public. In *Law Society of BC v. Hammond*, 2004 LSBC 32 at paragraph 25, the Panel concluded that:

A careful review of the authorities with respect to instances of misappropriation which did not lead to disbarment indicates that in each such case there were exceptional circumstances.

[7] Disbarment has been imposed even in cases involving a small amount of money. In *Law Society of BC v. Currie*, [1994] L.S.D.D. No. 123 a lawyer was disbarred for taking \$2,800 from a client from whom he had received it in trust. He had further misled his client on a number of occasions as to the reason for delay and had failed to respond to the Law Society. While this case is similar, there was no misleading conduct by the Respondent.

[8] This Panel must also consider the misconduct found on the other five counts of the citation. The principle to be followed is that of a global disposition as per *Law Society of BC v. Gellert*, 2005 LSBC 15 at paragraph 22.

[9] This Panel was also referred to the factors to consider in determining penalty set out in the *Ogilvie* decision cited above.

[10] Concerning the nature and gravity of the conduct proven, both the misappropriation and the failure to respond are serious as they strike at both the solicitor-client relationship and the ability of the Law Society to regulate.

[11] Concerning the age and experience of the Respondent, he was an experienced member of the Law Society, having been called in May, 1994.

[12] Concerning the impact upon the victim, the client H.R., suffered tension in her marriage caused by the delay in bringing her husband to Canada.

[13] Concerning any advantage gained by the Respondent, he obtained the sum of \$3,050, and neither fulfilled his instructions nor handled the funds according to Law Society Rules.

[14] Concerning the number of times the offending conduct occurred, the misappropriation took place on two occasions, and the failure to respond was in the face of 13 communications over five months. There

is no prior Professional Conduct Record.

[15] Concerning the possibility of rehabilitation, this Panel has no evidence.

[16] Concerning the impact on the Respondent, disbarment would have a significant effect. There is no evidence of any criminal or other sanction.

[17] Concerning the need for specific and general deterrence, specific deterrence is likely unnecessary as the Respondent is no longer a member of the Law Society. General deterrence favours disbarment.

[18] The need to ensure the public's confidence in the integrity of the profession favours a strong penalty.

Decision

[19] It is the view of this Panel that the Respondent must be disbarred, and it is so ordered. We are disappointed that the Respondent did not participate. Because of this, there is no mitigating evidence before the Panel that might have established the exceptional circumstances to avoid a penalty of disbarment.

Costs

[20] The Law Society presented a Bill of Costs totalling \$25,516.58, and we find those costs to be reasonable, given the two days of Section 39 proceedings and the three days of Panel hearings. We therefore order that the Respondent pay costs to the Law Society in the sum of \$25,516.58.