

2007 LSBC 52

Report issued: November 22, 2007

Oral Reasons: November 1, 2007

Citation issued: July 28, 2006

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

Donald Craig King

Respondent

**Decision of the Hearing Panel
on Penalty**

Hearing date: November 1, 2007

Panel: James Vilvang, Q.C., Chair, Richard Stewart, Robert Brun, Q.C.

Counsel for the Law Society: Jean Whittow, Q.C.

No-one appearing on behalf of the Respondent

Background

[1] At a hearing that was held on January 15th and 16th, 2007, this Panel found that the Respondent committed professional misconduct by altering lawyers' timesheets to indicate that more hours had been worked than had actually been worked when he knew or ought to have known that false accounts based on these altered timesheets would be submitted to the Department of Justice for payment.

[2] The Respondent did not attend the hearing that occurred in January, and he did not attend the hearing on penalty, which occurred on November 1, 2007.

Discussion

[3] Counsel for the Law Society took the position that disbarment was the appropriate penalty but very fairly put a number of cases before the Panel, some of which did not result in disbarment.

[4] As the Panel found in the case of *Law Society of BC v. McGuire*, 2006 LSBC 20, disbarment is the remedy for deliberate misappropriation of trust funds except in highly unusual circumstances. Though this was not technically a misappropriation of trust funds, the actions of the Respondent had the same effect. We have also been guided by the following passage from the *McGuire* decision, at para. [24]:

... We accept that disbarment is a penalty that should only be imposed if there is no other penalty that will effectively protect the public. Protecting the public, however, is not just a matter of protecting the Respondent's clients in future. Even if the latter could properly be done by imposing restrictions on the Respondent's use of his trust account, we do not think that such a measure adequately protects the public in the larger sense. Wrongly taking a client's money is the plainest form of betrayal of the client's

trust. In our view, the public is entitled to expect that the severity of the consequences reflect the gravity of the wrong. Protection of the public lies not only in dealing with ethical failures when they occur, but also in preventing ethical failures. In effect, the profession has to say to its members, " Don't even think about it." And that demands the imposition of severe sanctions for clear, knowing breaches of ethical standards.

And by the following passage from the Court of Appeal decision in the English case, *Bolton v. Law Society*, [1994] 2 All ER 486, [1994] 1 WLR 512:

Any solicitor who is shown to have discharged his professional duties with anything less than complete integrity, probity and trustworthiness must expect severe sanctions to be imposed upon him by the Solicitors Disciplinary Tribunal. Lapses from the required high standards may, of course, take different forms and be of varying degrees. The most serious involves proven dishonesty, whether or not leading to criminal proceedings and criminal penalties. In such cases the tribunal has almost invariably, no matter how strong the mitigation advanced for the solicitor, ordered that he be struck off the Roll of Solicitors.

Decision

[5] This case involved deliberate dishonesty, involving relatively large amounts of money over an extended period of time. No mitigating circumstances were presented.

[6] Having considered the principles set forth in *Law Society of BC v. Ogilvie*, [1999] LSBC 17 and having received very thorough and even-handed submissions from counsel for the Law Society, and having heard no response from the Respondent, we find that the only possible conclusion in this case is disbarment.

Costs

[7] The Panel also finds that full indemnity for costs is appropriate. There was no reason for us to deviate from the normal principle that full indemnity is appropriate. We therefore order that the Respondent, Mr. King, pay costs in the amount of \$52,879.59.