

2008 LSBC 16

Report issued: June 02, 2008

Citation issued: August 9, 2006

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

**Michael Curt Scholz**

Respondent

**Decision of the Hearing Panel  
on Penalty**

Hearing date: May 5, 2008

Panel: G. Glen Ridgway, QC, Chair, Richard N. Stewart, QC, Dirk J. Sigalet, QC

Counsel for the Law Society: Maureen S. Boyd

Counsel for the Respondent: George F. Gregory

## Background

[1] In its report issued January 17, 2008, this Panel determined that the Respondent had professionally misconducted himself with respect to counts 1, 2, and 4 of a citation issued August 9, 2006.

[2] Those counts provided as follows:

1. Your conduct in releasing funds which were held pursuant to an Order of the Supreme Court of British Columbia made November 17, 1997, in Vancouver Registry Action No. C975944, which required that such funds " be held in trust by Alexander Holburn Beaudin & Lang unless otherwise ordered by the court or agreed by all parties with any interest or claim to the funds." On July 20, 2001, you caused the release of these funds as a loan to your client G. Inc.:

(a) contrary to the investment provisions of section 15 of the *Trustee Act*, R.S.B.C. 1996, c. 464;

(b) without appropriate instructions contrary to Rule 351 of the Law Society Rules; and

(c) in breach of the terms of the Court Order.

2. Your conduct in acting for W. Ltd. and G. Inc. in relation to the same matter in circumstances which gave rise to divided loyalties contrary to Chapter 6, Rule 1 of the *Professional Conduct Handbook*.

4. Your conduct in acting for W. Ltd. to arrange a loan of funds over which it had a claim to G. Inc., when you were in a conflict of interest by reason of your employment by and financial interest in G. Corp., the parent company of G. Inc.

[3] In brief, the Respondent, holding funds in trust by Court Order, did not seek Court approval or the consent of all interested parties in a short-term loan of those funds to a client company with whom he was to be employed. There was no loss of the funds.

[4] The Respondent was called to the Bar of British Columbia in May of 1979 and practised with the firm of Alexander Holburn Beaudin & Lang until he left the practice of law in 2001.

[5] The Respondent is no longer a member of the Law Society of British Columbia.

[6] The factors to be considered in assessing penalty are set out in *Law Society of BC v. Ogilvie*, [1999] LSBC 17. The Law Society stressed the following factors as important in circumstances where the Respondent is no longer a member of the Law Society:

- (a) The need to ensure the public's confidence in the integrity of the profession;
- (b) The nature and gravity of the misconduct; and
- (c) The need for general deterrence.

[7] The misconduct in the circumstances of this case is important as it involves the breach of a Court Order and acting for two clients in a situation of divided loyalties.

[8] All citizens have a duty to observe Court Orders. This is particularly true for members of the Law Society, who are Officers of the Court and owe a duty to maintain the integrity of our legal system. Courts and Court Orders are at the core of our legal system.

[9] In addition, the duty of a lawyer to give each client undivided loyalty is fundamental. This is stressed by the Supreme Court of Canada in *R. v. Neil* (2002), 218 D.L.R. (4th) 671 and by the Benchers in *Law Society of BC v. Coglon*, [2002] LSBC 21.

[10] It is noted that there was ultimately no financial loss for any of the parties involved; however, this is not a significant factor in mitigation of the appropriate disposition of this matter.

[11] The Law Society made reference to numerous decisions relating to the appropriate disposition with respect to the Respondent. Counsel for the Respondent also provided authorities.

[12] It is the decision of this Panel that the appropriate penalty is that the Respondent be suspended from the practice of law for a period of one month commencing when this decision is issued.

[13] In addition to that, the Respondent will pay the costs of this matter, as submitted by the Law Society in the amount of \$26,437.50.

[14] It is the view of the Panel that the costs of these proceedings should not be borne by the membership of the Law Society, but rather by the Respondent, whose misconduct has brought on the proceedings.

[15] The well-established principles with respect to costs are those set out in the *Law Society of BC v. Edwards*, 2007 LSBC 04, which determined that the successful party is entitled to full indemnity for its costs and that the costs must be reasonable. It is the Panel's view that the costs submitted by the Law Society are reasonable in these circumstances, and full indemnity is warranted.