

2008 LSBC 37

Report issued: December 8, 2008

Oral Reasons: November 27, 2008

Citation issued: July 29, 2008

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

Khushpal Singh Taunk

Respondent

Decision of the Hearing Panel

Hearing date: November 27, 2008

Panel: G. Glen Ridgway, QC, Chair, Gavin Hume, QC, Bruce LeRose, QC

Counsel for the Law Society: Eric Wredenhagen

Counsel for the Respondent: Jerome Ziskrout

Background

[1] On July 29, 2008 a citation was issued against the Respondent pursuant to the *Legal Profession Act* and Rule 4-13 of the Law Society Rules by the Executive Director of the Law Society on a direction from the Chair of the Discipline Committee. The citation directed that this Panel inquire into the Respondent's conduct as follows:

In the course of representing a client in a family law proceeding - *G v. G*, [action number] (New Westminister Registry) (the "New Westminister Action") - you wrongfully obtained a divorce order on July 4, 2005 (the "Divorce Order") when on June 9, 2005 an order had been made that the New Westminister Action be consolidated with a previous family law court action between the same parties commenced in the Vancouver Registry (the "Consolidation Order"). You obtained the Divorce Order:

- a. Having taken no or inadequate steps to have the Consolidation Order entered;
- b. Without advising the Court of the existence of the Consolidation Order when you appeared on July 4, 2005 in the absence of the opposing party.

[2] The requirements for service of this citation upon the Respondent, pursuant to Rule 4-15 were admitted by the Respondent.

Statement of Agreed Facts

[3] Counsel submitted a Statement of Agreed Facts, which in summary sets out the following:

1. The Respondent was admitted to the bar of the Province of British Columbia on May 19, 2000. From that time to January 9, 2003, he was an associate with Beck Robinson & Company. Since January 9, 2003, he has practised on an office-sharing basis under the name " MMT Law" in Surrey. His practice currently consists of approximately 80% motor vehicle (plaintiff), 10% immigration law, 5% family law (uncontested divorces only), 5% civil litigation and creditors' remedies.
2. In or about March 2005, the Respondent was retained by his client MG to represent him in a divorce proceeding.
3. On January 29, 2004, MG's wife KG commenced a *Family Relations Act* proceeding in the Supreme Court, Vancouver Registry (the " Vancouver Action").
4. KG subsequently obtained a Without Notice Restraining Order dated February 6, 2004 enjoining MG from restraining, disposing of, encumbering, assigning or similarly dealing with family assets.
5. On February 20, 2004, MG filed a Statement of Defence and Counterclaim - Family Law Proceeding in the Vancouver Action. The Counterclaim contained a number of claims for relief, including a divorce.
6. On April 15, 2004, KG and MG, both represented by counsel, attended a Judicial Case Conference before Madam Justice Loo, and reached agreement on a number of issues, which was recorded in a Case Management Plan (the " Plan").
7. The April 15, 2004 case conference resulted in a consent order (the " Consent Order"). The Consent Order reflected a resolution of some of the matters at issue in the Vancouver Action, such as custody, access and child support. No formal Order was entered.
8. In or about February 2005, MG retained the Respondent. At their first meeting on March 7, 2005, MG provided the Respondent with the pleadings in the Vancouver Action. He advised the Respondent (incorrectly) that he had not sought a divorce in the Counterclaim. He further advised that all issues had been resolved except for the divorce (this was also incorrect: in fact, issues of spousal support and property division were outstanding and unresolved).
9. On March 10, 2005, the Respondent commenced a new action by filing a Writ of Summons - Family Law Proceeding and a Statement of Claim - Family Law Proceeding in the Supreme Court's New Westminster registry (the " New Westminster Action").
10. At the time the Respondent commenced the New Westminster Action, the Vancouver Action had not been dismissed or resolved by final judgment. The issues of divorce, spousal support and property division were still live and unresolved issues in the Vancouver Action.
11. On April 4, 2005, MG provided the Respondent with a copy of the Plan in the Vancouver Action. Upon reviewing the Plan, the Respondent realized that divorce, spousal support and property division were outstanding issues.
12. On April 5, 2005, the Respondent filed an Amended Writ of Summons - Family Law Proceeding and an Amended Statement of Claim - Family Law Proceeding (the " Amended Claim") in the New Westminster Action.

13. The material change made to the Amended Claim occurred in paragraph 14. Whereas paragraph 14 of the original statement of claim (in the New Westminster Action) stated incorrectly that the Consent Order in the Vancouver Action " resolved all the issues other than the divorce," paragraph 14 of the Amended Claim reads as follows:

The Defendant [KG] commenced an action in the Supreme Court of British Columbia, Vancouver Registry under Court File [number]. The Consent Order was signed on April 15, 2004 by the parties and their respective counsels [sic], resolved all issues other than the divorce, spousal support and property division. [underlining in original]

14. KG delivered a Statement of Defence - Family Law Proceeding (the " Defence") in the New Westminster Action.

15. In the Defence, the defendant pled as follows:

The Defendant only opposes the claim for Divorce until all other issues have been resolved. There are outstanding issues of spousal support and division of property. The Defendant will consent to divorce once the issues of spousal support and division of property have been resolved. [par. 6, underlining in original]

...

It is the Defendant's position that these matters including the Plaintiff's claim for divorce should be and would be better dealt with in the Vancouver location of Supreme Court as an action has already been commenced in the Supreme Court of British Columbia, Vancouver Registry, Court File No. [number] especially since the Plaintiff counterclaimed for divorce on February 20, 2004 at the Vancouver Registry. It does not make sense for the Plaintiff to now commence a new action for divorce at the New Westminster Registry when he has already filed for divorce at the Vancouver Registry. " [par. 14, underlining in original]

16. On April 29, 2005, the Respondent brought a Chambers application in the New Westminster Action, seeking an order for divorce. The application was heard before Madam Justice Smith.

17. The Respondent's client MG wanted to obtain a speedy divorce so that he could proceed with an arranged marriage to a new spouse in India. Madam Justice Smith was not prepared to grant a divorce until all other issues outstanding between the parties had been resolved.

18. In the result, therefore, Madam Justice Smith adjourned the application generally so that the outstanding issues in the Vancouver Action (property division and spousal support) could be resolved before the divorce application was dealt with. Toward the end of the application, Her Ladyship stated as follows:

I'm not into negotiating this. No, there's not any divorce order until those - I'll just adjourn it generally, on the condition that the issues raised in the FRA counterclaim in Vancouver, under Action Number [number], must be resolved.

19. The Respondent brought the divorce application back to Court on June 9, 2005, even though the condition imposed by Madam Justice Smith - namely, that the issues of spousal support and property division be resolved - had not been met.

20. In order to address the issues of property division and spousal support, the Respondent filed an affidavit of MG in which MG deposed that his only property was a part interest in real property that had been foreclosed on by creditors, and that he had no income because he was unemployed.

21. In response, KG filed an affidavit in which she deposed that MG had an interest in two companies. She also advised the Court that she had filed a Form 89 (financial disclosure) in the Vancouver Action, but that MG had not done so.

22. Because of the unresolved and outstanding issues between the parties, Madam Justice Smith rejected the Respondent's submission that the divorce be granted immediately and ordered instead that the Vancouver Action and the New Westminster Action be consolidated (the " Consolidation Order"):

THE COURT: Well, I'll tell you what. He's going to resolve this marriage breakdown first, before he goes on to the next marriage. And what I'm going to do is *I am going to make a consolidation order, Mr. Registrar, consolidating the Vancouver action with this action under this action number, because the next time this comes back to court, these two files are going to be together.* So the next judge can see what's going on. And there is authority to decline a divorce if there are outstanding issues. And **I am not prepared to grant a divorce in these circumstances without some attention being given to the outstanding issues.** ...

THE COURT: ... I'm not going to grant an order until that Vancouver file is here and I see what's going on. So if you want to --

MR. TAUNK: I --

THE COURT: -- arrange for that to be brought back here, I've made a consolidation order so this isn't dealt with in a piecemeal basis. You get the Vancouver file here. Let us know what's going on. ...

THE COURT: -- this is not a 15-minute application. This is a --

MR. TAUNK: My Lady, but I would request this honourable court to grant the divorce order on a condition --

THE COURT: No.

MR. TAUNK: -- that --

THE COURT: No. No. You can bring this on next week.

MR. TAUNK: After consolidating, if we file 18A form within so many days and we will have our divorce order, at least, so that we should have a guarantee at least that whatever we have done we will be doing and down the road that to get a divorce order at least there must be hope. And if there's no hope, then there's no point of coming back and --

THE COURT: Mr. Taunk, I have said you can come back to the Court with the Vancouver file; you

can deal with it next week, if you want, but you have to put this together. And the court has to know what's going on in both these actions. ...

MR. TAUNK: So then give me at least one month date, My Lady. ...

THE COURT: Okay. July 4th.

MR. TAUNK: Thank you, My Lady.

THE COURT: And Mr. Taunk, you'll have to prepare a consolidation order.

MR. TAUNK: Yes, My Lady.

[Emphasis added.]

23. Following the June 9, 2005 attendance, the Respondent prepared a draft of the Consolidation Order and sent it to KG by letter dated June 13, 2005.

24. The draft Order was ultimately signed by KG and the Respondent. This draft was rejected for filing by the Registry because of two defects: (1) it incorrectly referred to the Vancouver Action as " this action" and purported to consolidate the New Westminster Action with the Vancouver Action rather than the reverse; and (2) as an order issued in the New Westminster Action, it should have identified MG as the plaintiff and KG as the defendant, rather than the other way around.

25. Following the rejection of the first draft of the Consolidation Order, the Respondent prepared a new draft order and attempted again to have it entered. However, that draft order was once again rejected by the Registry as the revised draft still incorrectly had the New Westminster Action being consolidated with the Vancouver Action, and further did not set out the styles of cause.

26. Following his unsuccessful attempts to have the Consolidation Order entered, the Respondent set his application down for hearing on July 4, 2005, despite the fact that the two actions remained unconsolidated.

27. The Respondent did not serve a Notice of Hearing on KG.

28. The Respondent appeared in Court on July 4, 2005 before Madam Justice Dillon. KG did not appear, either with or without counsel.

29. At the July 4, 2005 attendance, the Respondent did not advise the Court of:

- (a) the two previous attendances before Madam Justice Smith;
- (b) the existence of the Vancouver Action;
- (c) the consolidation order made by Madam Justice Smith;
- (d) KG's reason for opposing the application.

30. As a result, the order for divorce sought by the Respondent was made, dated July 4, 2005 (the " Divorce Order").

31. KG subsequently became aware of the Divorce Order and wrote a letter of complaint to the Law

Society.

32. There was an exchange of correspondence between the Law Society and the Respondent between February 27, 2007 and November 30, 2007, wherein the issues that gave rise to the complaint were reviewed.

33. The Respondent, in his letter of November 30, 2007 to the Law Society provides the following explanation for his decision to seek a divorce order on July 4, 2005:

The consolidation order was not entered by July 04, 2005. Since the application was adjourned to that date, I determined to appear in Court that day and make a further attempt to obtain a divorce order for my client. I fully expected KG to appear and oppose it. KG did not appear. I went to Court and appeared that day assuming that the presiding judge would have reviewed the Court file and through reading the clerk's notes have knowledge of what had transpired before Madam Justice Smith on June 09, 2005. I had in mind Madam Justice Smith's comments on June 09, 2005 that another judge might grant the order (see transcript page 9, line 43-45). Also, by July 04, 2005, I thought that there were realistically no outstanding issues about division of assets or spousal support because my client had instructed me that he and the defendant had no equity in any assets they had and that there was a short fall of about \$300,000 due to creditors after a Court ordered sale of the assets. Additionally, my client was unemployed at that time.

34. In the same letter, the Respondent admitted that he should have advised Madam Justice Dillon of the consolidation order, admitted that he had failed in this duty to the Court, and expressed regret.

35. The Respondent admits that he wrongfully obtained the Divorce Order on July 4, 2005, in the absence of KG, (1) having taken inadequate steps to have the Consolidation Order entered; and (2) without advising the Court of the existence of the Consolidation Order. The Respondent admits that his conduct in this regard constitutes professional misconduct.

[4] The Panel accepts the admission by the Respondent that his conduct described in the citation amounted to professional misconduct and determines that he has, in fact, committed professional misconduct.

Penalty

[5] The Law Society and counsel for the Respondent discussed the appropriate penalty under the circumstances. As a result of that discussion, the Respondent consented to the following disciplinary action:

(a) A one-month suspension, commencing the first day of the month following the citation hearing date, being December 1, 2008; and

(b) Costs in the amount of \$2,500.

[6] In addition, the Respondent acknowledged that the circumstances summarizing this admission will be made as required by Rule 4-38 and that the publication would identify him.

[7] The Panel reviewed the documents provided with the Statement of Agreed Facts. In particular the Panel paid attention to the transcripts of the appearances before The Honourable Madam Justice Smith, which are

set out, in part, above. However, in view of the circumstances, the Panel questioned the appropriateness of the proposed disciplinary action. In particular, the Panel was concerned about the Respondent's failure to advise the Court on July 4, 2005 of the directions provided by the Court and, in particular, Madam Justice Smith, on June 9, 2005.

[8] The following authorities were reviewed by counsel in support of the appropriateness of the penalty:

- i) *Law Society of BC v. MacLeod*, [1998] LSDD No. 10;
- ii) *Law Society of BC v. Samuels*, 1999 LSBC 36;
- iii) *Law Society of BC v. Boles*, 1999 LSBC 14;
- iv) *Law Society of BC v. MacKinnon*, [2002] LSDD No. 11;
- v) *Law Society of BC v. Galambos*, 2007 LSBC 31.

[9] None of the authorities reviewed were directly analogous to the facts before the Panel.

[10] It was this Panel's view that the Respondent had not understood his obligations to the Court and, instead, as a result of his loyalty to his client, did not meet or had ignored his responsibilities to the Court.

[11] The Panel raised its concerns with counsel. During the course of the submissions, the Respondent gave an undertaking to the Law Society that he would not appear in Court or before administrative tribunals without senior counsel representing his clients, unless and until he was relieved of this undertaking by the Law Society.

[12] It was clear that Mr. Ziskrout had spent some time discussing the Respondent's ethical obligations as counsel. However, Mr. Ziskrout indicated that he would spend a further hour discussing those obligations again with the Respondent. Mr. Ziskrout explained that the Respondent's willingness to give the above-mentioned undertaking was in part as a result of the time he had spent discussing those obligations.

[13] Under those circumstances, the Panel was satisfied that a one-month suspension was appropriate.

[14] The Panel also recommended to the Respondent that he review the Practice Refresher Course - Module 1 Small Claims and Module 2 Supreme Court, and the Small Firm Practice Course and pay particular attention to the ethical issues discussed in those courses.

[15] In the result, the Panel orders that the Respondent:

- (a) Be suspended for one month from December 1st through December 31st, 2008; and
- (b) By March 31, 2009, pay the costs of these proceedings in the amount of \$2,500.