2009 LSBC 05
Report issued: February 05, 2009
Oral Reasons: November 20, 2008
Citation issued: July 5, 2007

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

Trevors Ross Bjurman
Respondent

Decision of the Hearing Panel

Hearing date: November 20, 2008
Panel: Leon Getz, QC, Chair, Haydn Acheson, David Mossop, QC
Counsel for the Law Society: Jaia Rai
Counsel for the Respondent: Trevors Bjurman

Background

[1] On July 5, 2007 a citation was issued against the Respondent pursuant to the *Legal Profession Act* and Rule 4-13 of the Law Society Rules. The citation directed that this Panel inquire into his conduct as follows:

> 1. Your conduct in submitting for registry a *Land Title Act* caveat dated August 11, 2004 and registered August 12, 2004 in the New Westminster Land Title office under number [number] containing confidential or privileged information pertaining to JP, a client or former client, without JP's consent.
>
> 2. Your conduct in a hearing in British Columbia Supreme Court on October 4, 2004 before Burnyeat J., and in particular your conduct in disclosing confidential or privileged information pertaining to JP, a client or former client, without JP's consent.
>
> 3. Your conduct in a hearing in British Columbia Supreme Court on October 4, 2004 before Burnyeat J. and in particular your conduct in seeking an order that JP surrender his passport on the basis that he was a potential flight risk when you had no expectation that JP would leave the jurisdiction.

[2] The requirements for service of this citation upon the Respondent, pursuant to Rule 4-15, were admitted by the Respondent.
[3] The Respondent has made a conditional admission that the conduct described in allegations 1 and 3 of the citation constituted professional misconduct. He has also conditionally consented to disciplinary action in the form of a fine of $7,500 and to payment of $4,500 towards the costs incurred by the Law Society in connection with its investigation of the complaints against him.
[4] The Respondent's admission and the proposed disciplinary action come before us for approval pursuant to the provisions of Rule 4-22 of the Law Society Rules. The Discipline Committee has accepted the admission and proposed sanction and counsel for the Law Society has recommended acceptance to us.
[5] Counsel for the Law Society indicated at the outset that, if we accept the admission and proposed disciplinary action, the Law Society would not proceed with the allegation in paragraph 2 of the citation.

Statement of Agreed Facts

[6] A Statement of Agreed Facts, redacted to protect certain confidential information concerning JP, the

Respondent's client or former client, has been entered into the record. We understand that the parties devoted considerable effort to the preparation of both the original and the redacted versions. While the redacted version sets out the essential facts, redaction itself causes some loss of coherence and continuity, and that is true in this case. To preserve confidentiality, we have not included the documents originally attached to the Statement of Agreed Facts.

[7] The following is an edited version of the Statement of Agreed Facts :

1. The Respondent was called to the Bar in British Columbia on May 14, 1976. The Respondent articled at Russell & DuMoulin for one year and practised there until 1980. In 1980 he moved to North Vancouver and practised with John Croft and David Finlay for five years and continued in partnership with John Croft and Donald Livingstone until March, 1990.

2. The Respondent has been practising as a sole practitioner since March, 1990 with no previous citations.

Background of Proceedings in *JP v. [Company]*

3. Until August 2004, a Korean businessman named JP owned real property at [address] (the " Property").

4. The Property is a designated Heritage Building. After purchasing the Property in 1996, JP sought tenants for the lower floor of the Property (the " Premises").

5. On August 1, 1996, a lease agreement was executed between JP, as landlord, and [Company], SM and CY as tenants (the " Tenants") for the Premises (the " Lease").

6. Between August and December, 1996, a significant dispute arose between JP and the Tenants. In 1997, an action was commenced in B.C. Supreme Court (the " Action").

7. In the Action, JP claimed judgment for arrears of payments due under the Lease and possession of the Premises. The Tenants filed a Counterclaim against JP, the value of which claim exceeded the net equity remaining in the Property.

8. John Piamonte (" Piamonte") represented the Tenants in the Action.

9. Initially, Joseph Bateman (" Bateman"), who is fluent in Korean, represented JP in the Action. Bateman was employed by Michael S.I. Hwang (" Hwang"), a lawyer who had represented JP in the purchase of the Property and executing the Lease. Hwang had the Lease prepared by Mr. Pollock of his firm and referred the Tenants to Jongman Kim (deceased), a Korean speaking solicitor at Boughton Peterson Yang Anderson, the firm that provided shelf companies to both JP and the Tenants.

10. Bateman acted for JP in the Action until June 2001, at which time JP became self-represented. On June 15, 2000, Bateman's firm, Shandro Dixon Edgson, filed a mortgage against the Property and JP's residence as security for fees. The mortgage was discharged against the residence on May 10, 2001 and against the Property in September 2003. When he ceased to act for JP, Bateman was also holding $20,000 in his trust account as security for costs ordered in the Action to be lodged by the Tenants. Bateman held this amount until April 11, 2005, when the $20,000 was paid into Piamonte's trust account on undertakings.

11. As of April 2003, the only outstanding issues in the Action concerned the Counterclaim. A nine-day trial on the Counterclaim was scheduled to commence on April 7, 2003 but was adjourned to a date in September 2003, peremptory on JP.

12. In August 2003, the Respondent was retained by JP to represent him in the Action. Michael Ranspot (" Ranspot") was subsequently retained as co-counsel in December 2003.

13. The Respondent was instructed to seek an adjournment of the September 2003 trial date, which

was peremptory on JP. On September 8, 2003, the Respondent and Piamonte appeared before Crawford J. who adjourned the trial to January 19, 2004, again peremptory on JP. Crawford J. also made an Order respecting the Property and the disposition of proceeds if the Property was sold (the " Crawford Order"). The terms of the Crawford Order are set out at pages 5 through 8 of the Oral Reasons for Judgment. It was the Respondent who suggested to Crawford J. that a lis pendens be filed by Piamonte against the Property.

14. A draft of the Crawford Order was prepared by Piamonte and sent to the Respondent. Counsel did not agree on the form and the Clerk's Notes were obtained. They did concur with the Respondent's notes. The transcript of the proceeding was not prepared until the summer of 2004, and the Order was not entered before the Property had sold. The Crawford Order was not entered until October 4, 2004, after being revised by Burnyeat J.
15. One of the terms of the Crawford Order, set out in paragraph 4 as initially drafted, was that:

> the Defendants be entitled to register a charge or Certificate of Pending Litigation on [the Property], taking direction from the Registrar of Land Titles respecting same, it being the intent of this Order that the Defendants have a contingent interest in the subject property, and that in the event of its sale prior to the completion of the trial, the net sale proceeds be paid into the trust account of the solicitor for the Plaintiff until judgment has been rendered, with liberty for the Plaintiff to apply to obtain release of such amount of same as exceeds the sum claimed by the Defendants.

16. No charge or Certificate of Pending Litigation was ever registered against the Property by Piamonte.
17. Rice J. adjourned the January 19, 2004 trial back to Burnyeat J. to determine if his earlier order covered the remaining issue in dispute.

18. On July 5, 2004, Burnyeat J. gave directions to the parties for amending pleadings and seized himself of the matter. The Tenants served a Notice of Motion pursuant to Rule 18A and the application was set for hearing before Burnyeat J. over a number of days commencing on October 4, 2004.
19. The Respondent and Ranspot appeared on October 4, 2004 before Burnyeat J., at which time they advised the Court that they were no longer acting for JP and wished to be removed as counsel of record. JP was present with an interpreter, but unrepresented. [The Purchaser of the Property] was present and represented by counsel.
20. The proceedings, from the commencement of the Action up to the October 4, 2004 appearance, are summarized in paragraphs 4 to 31 of Reasons for Judgment of Burnyeat J. dated March 8, 2005.

Disclosure of Information by the Respondent

21. The Respondent acted for JP from approximately August, 2003 to August 26, 2004, the date on which JP terminated the Respondent's retainer.
22. During the retainer, the Respondent rendered the following statements of account to JP on September 8, 2003, December 30, 2003, January 14, 2004, February 22, 2004 and August 10, 2004.
23. [Paragraph redacted]
24. On Friday, July 23, 2004, the Respondent was advised by JR, a mortgage broker, that the sale of the Property was scheduled to close the following Monday, on July 26, 2004, and that a lawyer named Judy Park had requested a mortgage payout statement for the private mortgages registered against title to the Property.

25. The Respondent subsequently wrote to Judy Park.
26. The Respondent was aware at this time that no charge or Certificate of Pending Litigation had been registered against the Property.

27. On July 26, 2004, the Respondent twice telephoned David Bilinsky at the Law Society. The

Respondent reported his discussions with Judy Park, through which he learned that his client intended to proceed with the sale of the Property and not pay the funds into the Respondent's trust account, contrary to the Crawford Order. The Respondent inquired as to what action he should take, if any, vis-à-vis the fact that nothing had been registered against title to the Property by Piamonte. [Sentence redacted] The Respondent telephoned Mr. Bilinsky a second time after Mr. Aulinger (a senior partner at Judy Park's firm) advised that the sale proceeds would be paid to the Respondent according to the Crawford Order, provided his firm did not get fired prior to closing. Mr. Bilinsky's advice was that the Respondent should not tell Piamonte anything of what he had learned [redacted], as those matters likely fell within the ambit of solicitor/client privilege. The advice also confirmed that the Respondent did have an obligation to the Court as a result of the Crawford Order and the Respondent's role as counsel to receive the conveyancing proceeds in trust.

28. The Respondent and Ranspot had ongoing discussions with JP concerning retainers and accounts receivable. On August 10, 2004, the Respondent filed and delivered to JP an Appointment to review his bills, pursuant to section 70 of the *Legal Profession Act*.
29. On August 11, 2004, the Respondent submitted to the Land Title Office a Caveat, to be registered against the Property. This form of Caveat was not registered. Later that same day, the Respondent submitted a second version of the Caveat with item #2 on the first page revised. The Caveat was rejected a second time.
30. The Caveat was resubmitted a third time and accepted for registration on August 12, 2004.
31. The Respondent says he filed the Caveat in an effort to prevent JP from breaching the Crawford Order and being found in contempt. He says that he was concerned about his duties as an officer of the Court and acted to prevent others from breaching the Crawford Order and was particularly concerned about being seen as a party to the breach and acted to distance himself from the breach. He accepts, however, that the filing of the Caveat also gave rise to a perception that he filed the Caveat to protect his fees.

32. The Respondent's office faxed a copy of the registered Caveat to CK's office on August 13 after leaving two messages for the Notary to call and not having heard back from him.
33. On August 16, 2004, as a result of communication with, and a request by, Tim Jowett, Deputy Registrar, Land Title Office, the Respondent submitted additional materials for registration with the Caveat.
34. The Caveat did not ultimately prevent the transfer of the Property because counsel for the purchaser wrote to the Registrar, Land Titles advising that the purchaser would accept title to the property subject to the Caveat.
35. The Respondent did not seek or obtain from JP his consent to disclose the information sworn by the Respondent in the Caveat or provided to the Land Title Office.
36. The Respondent says that he believed that filing the Caveat was the only way to prevent a fraudulent transaction and prevent the transfer of the Property without paying the proceeds into trust, contrary to the Crawford Order. The Respondent says he believed at the time that the information provided with the Caveat disclosed no more than was necessary to assert his claim for legal fees and support a claim under section 79 of the *Legal Profession Act*. He admits that the information disclosed could have been perceived, at the time, as more than necessary to assert a claim and was in fact more than necessary to assert a claim.

37. The Respondent admits that he disclosed confidential information in submitting the Caveat for registration and that this disclosure amounted to unprofessional conduct.
38. The Respondent's evidence is that, on August 24, 2004, the Respondent again telephoned the Law Society to enquire as to his obligations towards Piamonte and his clients, [redacted]. The Respondent

advised Jack Olsen of what had transpired in [redacted] and details of the Caveat the Respondent had filed pursuant to section 79 of the *Legal Profession Act* and his reason for doing so. Mr. Olsen advised the Respondent to only disclose to the Court that he no longer acts for JP and that he has a claim for fees. Mr. Olsen has no recollection of this conversation other than what is contained in his notes.
39. On August 26, 2004, the Respondent wrote to Piamonte advising of his intention to apply to the Court to withdraw as solicitor of record for JP. In the same letter, the Respondent advised Piamonte of his claim relating to outstanding legal fees and disbursements.

40. The Respondent and Ranspot had taken out an Appointment to review their bills before Master Scarth and a date was set for the hearing of same.
41. On September 17, 2004, the Respondent wrote to the Trial Coordinator (with a copy to Piamonte) asking that Crawford J. be made aware that, amongst other things, JP has outstanding fees and disbursements and related taxes due to his office and Ranspot, and that the Respondent is no longer the solicitor for JP with respect to the sale of the Property.
42. Upon receipt of the September 17, 2004 letter, Piamonte wrote to the Respondent. Piamonte accused the Respondent of being complicit in the fraud and the apparent circumvention of the Crawford Order.

43. On September 27, 2004, the Respondent wrote to the parties involved in the sale of the Property advising that he and Ranspot were asserting a solicitor's lien over the Property, pursuant to section 79 of the *Legal Profession Act*, would be seeking to have the transfer of title to the Property voided pursuant to section 79(6) of the *Act*, and were making a demand for discovery of documents pursuant to Rule 26(1) of the *Rules of Court*.
44. On the same date, the Respondent delivered a Notice of Motion to the parties in the Action regarding an application to be heard on October 4, 2004 for an order for a solicitor's charging lien on the Property, pursuant to section 79 of the *Legal Profession Act*.
45. During the proceedings on October 4, 2004, the Respondent suggested that it may be appropriate that Burnyeat J. make an Order that JP surrender his passport on the basis that he was a potential flight risk. At the time, the Respondent had no specific expectation that JP would leave the jurisdiction, but he had not fully considered the issue.
46. The Respondent made the flight risk submission after Ranspot whispered to him during submissions words to the effect, " ask JP to surrender his passport." The Respondent had no reason to question the judgment of his co-counsel in making this suggestion.

47. The Respondent admits that suggesting an order that JP surrender his passport when he did not personally believe at the time JP was a flight risk amounts to unprofessional conduct.
48. The October 2004 Order required non-parties to the Action to prepare and file Affidavits. On the application of one of the non-parties, the October 2004 Order was set aside by the Court of Appeal on November 1, 2005.

Complaint to the Law Society

49. The citation herein resulted from an investigation commenced by the Law Society upon receipt of information on November 8, 2005 from Richard Olson, who was counsel for Hwang on the application to set aside the October 2004 Order.
50. [redacted]
51. [redacted]

Discussion

[8] Each of the relevant paragraphs on the Schedule to the citation is amply made out on the agreed facts.

To disclose a client's privileged or confidential information without consent is subversive of the privileged position of members of the legal profession, and to make submissions to a Court that are not grounded in any evidence - worse, in this case, since the agreed facts indicate that the Respondent did not even consider whether there was any evidence to support his submission - is an abuse of the lawyer's relationship to the Courts.

[9] The conduct that the Respondent has admitted to cannot sensibly be characterized in any other way than as professional misconduct. In each case, it is so palpable that we do not consider an examination of precedents or authorities to be necessary. His admissions are appropriate and warranted. We accept them and find that his conduct in each case constituted professional misconduct.

[10] This brings us to the question of the appropriate sanction. Counsel for the Law Society has recommended a fine of $7,500 and the Respondent has agreed to this.

[11] Should we approve this? Our attention was drawn to several previous decisions. They deal exclusively with breaches of confidentiality by lawyers. Two of them - *Law Society of BC v. Ewachniuk,* [1995] LSDD No. 255 and *Law Society of BC v. MacAdam,* [1997] LSDD No. 55 - are fairly old. In the former, a fine of $2,500 was imposed and in the latter a reprimand. A third is *Law Society of BC v. Youngman,* Discipline Digest, *Benchers' Bulletin*, 2008 No. 3 July, at page 22. There, the lawyer resigned his membership in the Law Society and undertook, among other things, not to apply for readmission for five years. In the result, that case is unhelpful. We were also referred to the decision of a hearing committee of the Law Society of Alberta in *Law Society of Alberta v. Bissett,* [1999] LSDD No. 74*,* in which a fine of $5,000 was imposed.

[12] In a submission on his own behalf, the Respondent urged upon us that, in making the unauthorized disclosure of confidential information in the Caveat, he was motivated primarily by a concern to ensure the integrity of the Crawford Order. This is essentially a restatement of his belief as set out in paragraphs 31 and 36 of the Statement of Agreed Facts. Its persuasiveness is somewhat muted, however, by his concession, also set out in those paragraphs, that it might reasonably be perceived that he was acting to protect his fees.

[13] Having regard to the age of the cases referred to in paragraph [11] and the fact that the Respondent's transgressions are not limited to disclosure of confidential information but include, as well, the wholly improper suggestion the Respondent made to Burnyeat J. on October 4, 2004 that his former client, JP, was a flight risk, it is our view that a fine of $7,500 is fit and we approve it.

[14] Counsel for the Law Society has asked us to order that the Respondent make a contribution of $4,500 towards its costs in connection with this matter. We were advised that this represents approximately one-quarter of its actual costs. The Respondent has agreed to this and we so order.

Summary

[15] In summary:

(a) We find that the Respondent is guilty of professional misconduct with respect to paragraphs 1 and 3 on the Schedule to the citation; paragraph 2 is dismissed;

(b) We order that the Respondent:

(i) pay a fine of $7,500; and

(ii) make a contribution of $4,500 towards the Law Society's costs in this matter.