

2009 : No. 1 April

Jack Alexander Adelaar

Vancouver, BC

Called to the bar: June 29, 1972

**Discipline hearing** : April 21 (Facts and Verdict) and December 10, 2008 (Penalty)

**Panel** : David Renwick, QC, Chair, Carol Hickman and David Mossop, QC

**Report issued** : July 2, 2008 (2008 LSBC 18) and January 23, 2009 (2009 LSBC 01)

**Counsel** : Jaia Rai and Maureen Boyd for the Law Society and Terrence Robertson, QC for Jack Alexander Adelaar

## Facts

Jack Alexander Adelaar represented a vendor in a real estate transaction. The vendor had accepted an offer, and the option to purchase was open until midnight on September 30, 2006. Counsel for the purchaser advised Adelaar that he would deliver a certified cheque for \$100,000 to be held in trust by Adelaar pending completion of the transaction. However, at 4:40 pm on September 29, Adelaar received a bank draft for \$90,200 and \$9,800 cash from a representative of the purchaser. The funds had to be in Adelaar's trust account by midnight on Saturday September 30, a non-banking day. He did not have a safe in his office to store the money over the weekend, and he could not reach counsel for the purchaser. He opted to deposit the cash to his account on September 29, 2006 and was aware when he did so that he would be in breach of Rule 3-51.1.

On October 31, Adelaar advised the Law Society in writing that he had received and deposited the \$9,800 in cash.

At the time Adelaar received the cash, the Law Society had issued 12 publications regarding Law Society Rule 3-51.1, the "no cash rule." Adelaar admitted that he was aware that the Law Society Rules limited the amount of cash a lawyer may receive to no more than \$7,500 in respect of any one client matter or transaction, and he knowingly accepted the cash in breach of the rule. However, it was a one-time occurrence, and he had expected to receive funds by way of a certified cheque, not cash.

## Verdict

The hearing panel considered a number of mitigating circumstances in reaching their decision. The panel agreed that Adelaar had not expected to receive cash and he had no place to store the money over the weekend. If he had kept the money in an unsecure location he could have been in violation of Chapter 7.1 of the *Professional Conduct Handbook*, which requires lawyers to store valuables (cash) in a secure place apart from the lawyer's property. In addition, if he had returned the cash to counsel for the purchaser, he would have exposed that lawyer to a violation of Rule 3-51.1.

The panel also noted that this case illustrates the potential for civil liability issues arising from Rule 3-51.1. Because the option agreement did not stipulate how the \$100,000 was to be paid (solicitor trust cheque or certified cheque), if Adelaar rejected the \$9,800 cash he might have put his client and himself in a position of civil liability.

Considering these circumstances, the hearing panel found that, while Adelaar breached Rule 3-51.1, the

breach did not amount to professional misconduct. The panel noted that this case illustrates some shortcomings in the Rules that the Benchers may wish to address.

## **Penalty**

In their assessment on Penalty the panel considered the unique circumstances of this case as well as Adelaar's professional conduct record and ordered:

1. a fine of \$1,000; and
2. \$500 in costs.