

2009 LSBC 31

Report issued: October 21, 2009

Oral Reasons: October 15, 2009

Citation issued: April 9, 2008

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

Lu Chan

Respondent

**Decision of the Hearing Panel
on Penalty**

Hearing date: October 15, 2009

Panel: William Jackson, Chair, Leon Getz, QC, Meg Shaw, QC

Counsel for the Law Society: Eric Wredenhagen

Appearing on his own behalf: Lu Chan

Background

[1] The hearing on Facts and Verdict was held on August 27, 2008. This Panel held that the Respondent had committed a breach of Rule 3-51.1 of the Law Society Rules, for conduct particularized in the April 9, 2008, citation, that provided:

1. On or about June 22, 2006, while representing a client from China in an immigration matter, you received or accepted cash in an aggregate amount of \$7,500 or more in respect of one client matter or transaction, contrary to Rule 3-51.1 of the Law Society Rules.

[2] The applicable provision respecting penalties is the *Legal Profession Act*, s. 38(5). The range of penalty is a reprimand to disbarment.

[3] There was a joint submission on penalty. The submission was a fine of \$1,000 and no costs to either party. The Respondent also agreed to abandon his application for anonymous publication of these proceedings pursuant to Rule 4-38(1).

[4] As is usual in these determinations, the Panel was referred to the decision of *Law Society of BC v. Ogilvie*, [1999] LSBC 17, which sets out a non-exhaustive list of factors that may be considered by a hearing panel in determining the appropriate penalty:

- (a) the nature and gravity of the conduct proven;
- (b) the age and experience of the respondent;
- (c) the previous character of the respondent, including details of prior discipline;

- (d) the impact on the victim;
- (e) the advantage gained, or to be gained, by the respondent;
- (f) the number of times the offending conduct occurred;
- (g) whether the respondent has acknowledged the misconduct and taken steps to disclose and redress the wrong and the presence or absence of other mitigating circumstances;
- (h) the possibility of remediating or rehabilitating the respondent;
- (i) the impact upon the respondent of criminal or other sanctions or penalties;
- (j) the impact of the proposed penalty on the respondent;
- (k) the need for specific and general deterrence;
- (l) the need to ensure the public's confidence in the integrity of the profession; and
- (m) the range of penalties imposed in similar cases.

[5] Counsel for the Law Society submitted that, given the decisions at first instance and on Review, the factor from *Ogilvie* most directly engaged in the agreed penalty position is " the range of penalties imposed in similar cases."

[6] The Respondent admitted from the outset that he had breached the Rule. The dispute was whether the Respondent's conduct also constituted professional misconduct.

[7] This Panel found that " the Respondent is not guilty of professional misconduct. What saves him is that he made the effort to examine his professional obligations and to act consistently with them ..."

[8] The Law Society sought a Review of this Panel's decision pursuant to s. 47 of the *Legal Profession Act*. The Benchers on Review upheld this Panel's determination on Facts and Verdict.

Analysis

[9] The Panel considered the *Ogilvie* factors.

[10] Considering (a), the proven conduct was a breach of a Rule, not the more serious professional misconduct.

[11] Considering (b), the Respondent is a senior member of the bar.

[12] Considering (c), the Respondent is of previous good character and without any prior discipline history.

[13] Considering (d), there was no victim.

[14] Considering (e), the Respondent did not gain, nor could have gained any advantage.

[15] Considering (f), there was only one incident of the offending conduct.

[16] Considering (g), the Respondent acknowledged his error.

[17] Considering (h), the action of the Respondent was an isolated incident.

[18] Considering (i), there are no criminal or other sanctions.

[19] Considering (j), the impact of the proposed penalty will not jeopardize the Respondent's practice.

[20] Considering (k), the fine and publication of the penalty will provide both specific and general deterrence.

[21] Considering (l), the fine and publication of the penalty will maintain the public's confidence in the integrity of the profession.

[22] Considering (m), there are three decided cases involving a breach of this Rule.

[23] In *Law Society of BC v. Lyons*, 2008 LSBC 38, a fine of \$1,500 and costs of \$2,700 was imposed. In that case, the Respondent was specifically advised of the requirements of the Rule and deliberately breached it twice on the same file.

[24] In *Law Society of BC v. Adelaar*, 2009 LSBC 01, a fine of \$1,000 and costs of \$500 was imposed. In that case, while the Respondent was aware of the Rule, the time of receipt of the cash and the impossibility of returning the cash without violating other ethical requirements made a breach of the Rule one of several bad options.

[25] In *Law Society of BC v. Norton*, 2008 LSBC 36, a fine of \$500 and costs of \$500 was imposed. In that case the Respondent was aware of a restriction on cash transactions but was in error as to the requirements of Rule 3-51.1. Upon checking the Rule the same day, the Respondent reversed the transaction.

[26] With reference to the case at hand, the facts are less serious than those of the *Lyons* case in which there was an admission of professional misconduct. This case is more serious than the *Norton* case as Mr. Chan did not immediately recognize and seek to correct his error.

[27] With respect to costs, while the Law Society was successful in the hearing on the merits of the citation, the Respondent was successful on the s. 47 Review.

Decision

[28] After consideration, this Panel finds that the appropriate disposition of this matter is a fine in the amount of \$1,000 and no costs to either party.

[29] This Panel orders that the Respondent pay a fine in the amount of \$1,000, to be paid on or before November 30, 2009.