

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

Robert John Palkowski

Respondent

Decision of the Hearing Panel

Hearing date: November 27, 2009

Panel: G. Glen Ridgway, QC, Chair, Barbara Levesque, Ronald Tindale

Counsel for the Law Society: Eric Wredenhagen

Counsel for the Respondent: Donald Muldoon

Background

[1] On June 23, 2009 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:

On February 26, 2006, you operated a motor vehicle while impaired by alcohol and were involved in a collision that caused bodily harm to another person, contrary to section 255(2) of the *Criminal Code of Canada*.

[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 the Schedule to the citation constitutes conduct unbecoming a lawyer. He has also conditionally consented to disciplinary action in the form of a one month suspension and to payment of \$1,500 towards the costs incurred by the Law Society in connection with its investigation of the complaint 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.

Statement of Agreed Facts

[5] An Agreed Statement of Facts was filed in these proceedings. It provided as follows:

1. Robert John Palkowski (the " Respondent") was admitted to the bar of the Province of British Columbia on January 10, 1978.
2. From his date of call to July 7, 1978, the Respondent practised law at the firm David G. Bell. After

that date, the Respondent practised law at the firm Rust, McCandless & Co. (later named McCandless, Palkowski & Burns, and thereafter McCandless & Co).

3. Since about March 8, 1983 the Respondent has practised law under the name Palkowski & Company Law Corporation in Vancouver.

4. The Respondent primarily practises in the areas of Commercial and Corporate law but also practises in the areas of Real Estate, Civil Litigation, Securities, Family, and Creditor's Remedies.

Background Facts

5. By letter dated March 14, 2006, then counsel for the Respondent reported to the Executive Director of the Law Society that the Respondent had been involved in a motor vehicle accident on February 26, 2006 and that he was facing three criminal charges. A complaint file was opened by the Law Society.

6. The charges are set out in Information No. 47357 sworn May 24, 2006:

(a) Dangerous Operation of a Vehicle Causing Bodily Harm contrary to s. 249(3) of the *Criminal Code*;

(b) Impaired Driving Causing Bodily Harm contrary to s. 255(2) of the *Criminal Code*; and

(c) Failure or Refusal to Comply with a Demand Made by a Peace Officer and Failure or Refusal to provide a Breath Sample contrary to s. 254(2) and s. 254(5) of the *Criminal Code of Canada*.

7. On February 26, 2006, at approximately 9:00 p.m. in the evening, the Respondent was driving his vehicle northbound over the Lions Gate Bridge, when he crossed the centre double solid yellow lines into oncoming traffic.

8. RC was driving his vehicle in a southbound direction entering the north end of the bridge when he witnessed the Respondent cross the centre line into his lane. RC swerved into the curb lane to avoid a head-on collision; however, the Respondent's vehicle hit the rear drivers' side of RC's vehicle. The vehicle behind RC also swerved out of the way to avoid being hit by the Respondent.

9. The Respondent continued to drive his vehicle into oncoming traffic and collided head on with a vehicle being driven by OA. OA's vehicle was extensively damaged and he sustained serious injuries.

10. OA has commenced a civil action in the Supreme Court of British Columbia against the Respondent and 3772099 BC Ltd, the owner of the vehicle driven by the Respondent, and the Insurance Corporation of British Columbia as a Third Party to the action.

11. There was extensive damage to the Respondent's vehicle and the Respondent's airbag deployed.

12. Constable Arash Seyedalikhani, then a police officer in the District of West Vancouver, was immediately dispatched to the scene of the accident.

13. When Constable Seyedalikhani arrived at the scene of the accident, he approached the Respondent who was being examined by the paramedics.

14. Constable Seyedalikhani noted the following with respect to the Respondent's behaviour immediately after the accident:

I found PALKOWSKI'S behavior to be odd as he was not able to concentrate on looking at me as a spoke to him and he had a confused look on his face as he stared at me blankly. ...

PALKOWSKI was not very talkative and seemed to be very confused and deliberate as he identified himself.

As I leaned closer to PALKOWSKI and the interior of the vehicle, I detected a strong odor of liquor emanating from the interior of the vehicle and PALKOWSKI'S breath.

I noticed PALKOWSKI'S face to be flushed, his eyes watery, his mouth and lips dry, clothes disorderly and disheveled, pupils dilated, and his speech slurred.

PALKOWSKI seemed confused, uncertain, and arrogant as he spoke to me.

I asked PALKOWSKI if he had consumed any alcohol. He stated, " No" . I asked him if he was taking any medication. He stated, " No" .

PALKOWSKI was not able to concentrate and look me in the eyes as he was speaking. It was as though he was looking through me and was not able to focus his eyes on me.

At this time, I had reasonable grounds to believe that PALKOWSKI'S ability to drive a motor vehicle was affected by alcohol.

15. Constable Seyedalikhani attempted three times to collect a breath sample from the Respondent at the roadside. This occurred while the Respondent was lying on a stretcher. The Respondent blew into the Approved Screening Device on three occasions but no suitable sample was obtained. The Respondent told Constable Seyedalikhani that he could not provide a sample, and later refused to blow.

16. The Respondent was transported to the Lion's Gate Hospital to be assessed for injuries. Constable Seyedalikhani, the paramedics, and the Respondent waited in the Emergency area until a bed became available for the Respondent to be examined.

17. At approximately 10:02 p.m. Constable Seyedalikhani read the Respondent his rights with respect to refusing to provide a breath sample. Constable Seyedalikhani noted that the Respondent would not answer when spoken to.

18. Shortly after, the Respondent became agitated and demanded to leave the hospital, refusing to be checked by a doctor. Constable Seyedalikhani advised him that he was not free to leave as he was under arrest.

19. The report of James Lande, the BC Ambulance Service Paramedic who treated the Respondent, is attached to this Agreed Statement of Facts. Mr. Lande noted, in part, the following with respect to the Respondent's behaviour at the hospital:

Once at the hospital and admitted and waiting for a bed, our [patient] became aggressive and angry and stated he wanted to leave. I advised him numerous times of the possible consequences of refusing assessment by doctors and he agreed to stay and be assessed after standing and removing the hardcollar against advice. About 10-15 minutes later he began to get angry again and wanted to leave again. He removed his hardcollar and stood up, nearly falling over.

20. The Respondent eventually agreed to be assessed by a doctor. While being assessed, the

Respondent told the doctor that he had had a glass of wine.

21. A blood sample taken from the Respondent at approximately 1:20 a.m. showed that the Respondent's blood alcohol level at the time of the accident was approximately three times the legal limit.

22. The Respondent was released from the hospital at approximately 2:00 a.m. Constable Seyedalikhani transported the Respondent to the West Vancouver Police Department Headquarters where he was processed and later released on a Recognizance of Bail.

23. The Respondent's first appearance was scheduled for May 24, 2006 in the North Vancouver Provincial Court.

24. On or about August 30, 2006, the Law Society received an undertaking from the Respondent, dated August 18, 2006. The consideration of the complaint by the Discipline Committee was therefore placed in abeyance on October 12, 2006 until the criminal proceedings could be concluded.

25. A one-day preliminary inquiry was scheduled for May 25, 2007, and a Preliminary Hearing was set for October 16 and 17, 2007. The trial was set for four days commencing October 27, 2008.

26. On October 17, 2008, the Respondent appeared in the North Vancouver Provincial Court and entered a guilty plea to Count 2 on the Information, namely impaired driving causing bodily harm. The sentencing hearing was scheduled to proceed on December 17, 2008.

27. On January 15, 2008, the Respondent was sentenced to a 12-month conditional jail sentence and a 12-month driving prohibition. Judge Moss noted as follows with respect to the Respondent's behavior:

...At the scene when the officers attended, the accused admitted to having been drinking. He seemed to be experiencing mood swings. Once he was taken to the hospital, he removed the collar that was placed on his neck for his own assistance and tried to leave. The investigating police officer described him as confused, uncertain, slurred speech, watery eyes. They were unable to obtain a sample of his breath into the handheld screening device, and then I believe there was a refusal. The accused was described as argumentative.

28. Judge Moss made the following finding regarding the Respondent's blood alcohol level:

The EHS took both he [sic] and the accused to hospital. Ultimately, the accused having had a blood sample taken from him at the hospital that night for medical purposes at around 1:20, the Crown obtained that blood sample or the analysis of it, and it turns out that by extrapolation, that the blood alcohol content of Mr. Palkowski at the time of driving would have been three times the legal limit, somewhere around .207 to .263. Extremely high. That information was not available at the preliminary inquiry and counsel says that ultimately when that did become available to him, that changed his approach to the case.

29. Counsel for the Respondent, Donald Muldoon, wrote to the Law Society on February 11, 2009 and stated, in part:

...Mr. Palkowski accepted full responsibility for his conduct. He acknowledged that he drank too much on the date in question and then decided to drive home. Mr. Palkowski is a habitual cigar smoker. He was smoking a cigar while driving. I understand that the cigar dropped from his hand

and while attempting to retrieve it, failed to properly [sic] control his vehicle. A motor vehicle accident ensued. [sic] ...

... This incident was an isolated event which Mr. Palkowski deeply regrets. His acceptance of responsibility was reflected in his guilty plea.

30. The Respondent admits that on February 26, 2006, he operated a motor vehicle while impaired by alcohol and was involved in a collision that caused bodily harm to another person, contrary to section 255(2) of the *Criminal Code of Canada*.

31. The Respondent admits that his conduct, as described in the Schedule to the citation and admitted to in this Agreed Statement of Facts, constitutes conduct unbecoming a lawyer.

[6] After considering the circumstances set out in the Agreed Statement of Facts and having heard the submissions of counsel, the Panel accepts the admission and finds the Respondent has committed conduct unbecoming a lawyer.

[7] The Panel finds the penalty proposed by the Respondent, and recommended by the Discipline Committee, to be appropriate in all of the circumstances.

[8] It is accordingly ordered that the Respondent:

1. is suspended for one-month, effective December 5, 2009; and
2. pay costs in the amount of \$1,500, on or before January 1, 2010.