

2003 LSBC 42

Report issued: November 26, 2003

Citations issued: June 20, 2003 and
August 18, 2003

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

BRIAN MAURICE LEGGE

Respondent

**Decision of the Hearing Panel
on Facts and Verdict**

Hearing date: November 25, 2003

Panel: G. Ronald Toews, Q.C., Chair, Anne Wallace,
Ralston S. Alexander, Q.C.

Counsel for the Law Society: Jessica Gossen

Counsel for the Respondent: Christopher E. Hinkson, Q.C.

Background

[1] On June 20, 2003 a citation was issued to the Respondent pursuant to the *Legal Profession Act* and Rule 4-15 of the Law Society Rules by the Executive Director of the Law Society, pursuant to the direction of the Chair of the Discipline Committee. The citation directed that the Hearing Panel inquire into the Respondent's conduct as follows:

1. You breached Law Society accounting rules as set out in the Audit Report dated April 16, 2003, and, more specifically, you:

(a) breached Rule 3-48 by not accounting to clients for all funds received on their behalf;

(b) deposited into trust funds other than trust funds, contrary to Rule 3-52(3) and (4);

(c) breached Rule 3-55 by failing to maintain sufficient funds on deposit in trust to meet your obligations for your clients S., K., F. C. Ltd., and D.;

(d) breached Rule 3-56(1.2) by authorizing a payment from funds in trust when there were not sufficient funds held to the credit of the client on whose behalf the funds were paid with respect to your clients K. and F. C. Ltd.;

(e) breached Rule 3-59(3) by failing to record transactions in books, records and accounts as required by the Law Society Rules in chronological order and in easily traceable form;

(f) breached Rule 3-60(a), (b), (c), and (d) by failing to maintain the required trust books, records and accounts;

(g) breached Rule 3-61(1)(a) by failing to maintain general books, records and accounts including a general cash book or synoptic journal and (b) by failing to maintain an accounts receivable ledger or other suitable system to record all transactions in which a bill has been delivered or a disbursement made;

(h) breached Rule 3-62(1)(c) by failing to maintain a proper billings file;

(i) breached Rule 3-63(1) by failing to record each trust and general transaction within the required time frames;

(j) breached Rule 3-63(2) by failing to record in your general books and account all funds received on account of fees or otherwise from or on behalf of clients;

(k) breached Rule 3-64 by failing to add and balance your trust and general cash book and synoptic journal at least monthly;

(l) breached Rule 3-65(4) by failing to make the required trust reconciliation not more than 30 days after the effective date of the reconciliation;

(m) breached Rule 3-68(2) by failing to retain the trust books, records and accounts relating to the most recent five-year period at your chief place of practice.

2. You failed to serve your clients in a conscientious, diligent and efficient manner so as to provide a quality of service at least to that which would be expected of a competent lawyer contrary to Chapter 3, Paragraph 3 of the Professional Conduct Handbook.

3. Contrary to Chapter 3, Paragraph 1(b) and (c) of the Professional Conduct Handbook, with respect to your real estate practice, you failed to acquire and maintain both an adequate knowledge of the practice and procedures by which that substantive law could be applied, and adequate skills to represent your client's interests effectively.

4. You failed to remit collected PST and GST contrary to the provisions of the *Social Services Tax Act* and the *Excise (GST) Act*.

5. You failed to remit employee source deductions contrary to the *Income Tax Act*.

6. With respect to your client, R.K. between November 27, 2002 and January 20, 2003 there was a trust shortage of \$11,154.89 and, contrary to Rule 3-66 of the Law Society Rules, you did not:

i) immediately pay enough funds into the accounts to eliminate the shortage, and

ii) immediately report the shortage, and the circumstances surrounding it, in writing, to the Executive Director of the Law Society.

7. With respect to your client, F. C. Ltd., between October 30, 2002 and April 7, 2003 there was a trust shortage of \$5,473.29 and, contrary to Rule 3-66 of the Law Society Rules, you did not:

i) immediately pay enough funds into the accounts to eliminate the shortage, and

ii) immediately report the shortage, and the circumstances surrounding it, in writing, to the Executive Director of the Law Society.

[2] On August 18, 2003 another citation was issued to the Respondent pursuant to the *Legal Profession Act*

and Rule 4-15 of the Law Society Rules by the Executive Director of the Law Society, pursuant to the direction of the Chair of the Discipline Committee. The citation directed that the Hearing Panel inquire into the Respondent's conduct as follows:

1. You failed to provide a substantive response to communications from the Law Society dated March 5, April 4, April 22, and May 6, 2003, contrary to Chapter 13, Rule 3 of the *Professional Conduct Handbook*.

[3] Both citations came before this Panel on November 25, 2003.

[4] At the commencement of this hearing, counsel for the Respondent admitted that the requirements of the Rules of the *Legal Profession Act* as regards the issuance and service of the citations had been met.

[5] The two citations were entered by consent as Exhibits 1 and 3 respectively. Letters admitting service of the citations were entered as Exhibits 2 and 4.

[6] Two books of Agreed Statement of Facts were entered into evidence. The book relating to the June 20, 2003 citation was marked as Exhibit 5 and the book relating to the August 18, 2003 citation was marked as Exhibit 6.

[7] Copies of a number of letters were entered by consent: a letter from Mr. Hinkson, Q.C. dated May 7, 2003, was marked as Exhibit 7; a letter from Jean Whittow, Q.C. dated May 9, 2003 was marked Exhibit 8.

[8] Two binders of materials were entered by consent: one, an audit report of the law practice records of Legge, Sarai & Associates by Kinsey and Company was marked Exhibit 9; the other, a review of a number of conveyancing files and records of Legge, Sarai & Associates by Penny J. Lehan, Barrister and Solicitor, was marked Exhibit 10.

[9] A copy of a citation against the Respondent's partner, Mr. Sarai, was marked Exhibit 11 and a copy of a letter from Mr. Hinkson, Q.C. dated June 6, 2003, was marked as Exhibit 12.

[10] The Agreed Statement of Facts which relates to the June 20, 2003 citation sets out as follows:

1. Mr. Legge was called to the Bar of British Columbia on May 12, 1967.
2. Mr. Legge was a full time practitioner with the firm, Legge & Co. from January 1971 to December 31, 1996, when he ceased practising law. On October 9, 1997, he returned to practice with Legge & Co. until June 30, 1997. At that time, Mr. Legge became exempt until October 9, 1997, where he practiced again with Legge & Company. Mr. Legge ceased practising once more from January 1, 1999 through to October 3, 2000, at which time he retained employment with La Liberte & Company. On June 1, 2001, Mr. Legge became employed with Feller, Drysdale and continued practising there until he established Legge Sarai & Associates on May 17, 2002. Between May 1 and May 30, 2003, Mr. Legge practised as a sole practitioner. On November 10, 2003 Mr. Legge was suspended from practice pending the disposition of this citation.
3. In the course of investigating another matter, the Law Society conducted Land Title Office searches on properties with which Mr. Legge and Randeep Sarai of the law firm of Legge Sarai & Associates ("the Firm") were associated.
4. On March 18, 2003, an audit of the Firm was ordered pursuant to Rule 4-43 of the Law Society Rules.
5. The Law Society retained William Kinsey to conduct the financial audit and Mr. Kinsey's Audit Report

was issued on April 16, 2003.

6. Because of the area of practice involved, the Law Society also retained Penny Lehan, a Vancouver real estate lawyer, to conduct a review of certain files of the Firm. Ms. Lehan's report is dated April 16, 2003.

7. Mr. Kinsey's audit report found that the Firm had failed to comply with certain provisions of Division 7, Part 3 of the Law Society Rules (" Rules"). More specifically:

- a) the Firm breached Rule 3-48 by failing to account to clients for all funds received on their behalf;
- b) the Firm deposited into trust, funds other than trust funds, contrary to Rule 3-52(3) and (4);
- c) Mr. Legge breached Rule 3-55 by failing to maintain sufficient funds on deposit in trust to meet his obligations in relation to his clients S., K., F.C. Ltd. and D., and more particularly:

Client S.

- i) In relation to his client, S., Mr. Legge issued a trust cheque on September 4, 2002 in the amount of \$600.00.
- ii) On November 18, 2002, Mr. Legge wrote another \$600.00 cheque for the same fee. The handwritten ledger sheet indicated that amount was still in trust and that the billing had not been paid (Attachment #6). The Firm maintained handwritten trust ledger sheets that were kept on the premises of the Firm as well as employing an outside accounting firm which used a computerized bookkeeping system (Quickbooks program).
- iii) The Quickbooks ledger sheet, which correctly reflected the September and November cheques and noted the ensuing trust overdraft, was not kept on the premises of the firm and was not consulted by Mr. Legge when he wrote the second cheque.
- iv) A review of the Quickbooks records would have revealed the trust shortage.

Client K

- v) Mr. Legge acted for his client K. in relation to its purchase of (a) East 26th Avenue on July 23, 2002. On November 27, 2002, a trust cheque was issued to Mr. Tse, the vendor's solicitor, in the amount of \$278,758.89.
- vi) The issuance of that cheque created a trust overdraft in the sum of \$11,154.89. The handwritten ledger sheet shows a transfer on November 27, 2002 in the amount of the shortage from file F0169, a file that was related to this client, but Mr. Legge crossed out the ledge entry and the transfer did not take place at that time. The ledger entry does not correctly record the date upon which the funds were received.
- vii) The shortage was not eliminated until the property was resold and the sale proceeds of that sale were paid out on January 20, 2003. Mr. Legge permitted a trust shortfall to persist from November 27, 2002 to January 20, 2003 in relation to this client.

Client F.C. Ltd.

viii) In relation to his client, F.C. Ltd., Mr. Legge permitted a trust shortage in the sum of \$5,473.29 to persist from December 13, 2002 to April 7, 2003.

ix) On October 26, 2002, Mr. Tse, acting on behalf of a purchaser, forwarded the sum of \$95,000 to the Firm on the basis of Mr. Legge's undertaking to pay out and discharge certain charges against the property filed on behalf of various creditors.

x) Mr. Legge issued a trust cheque in the sum of \$5,473.29 to one of the creditors, A Class Doors Ltd. on October 30, 2002. Neither the cheque, nor the cheque stub identified the file to which the amount should be charged and the handwritten ledger sheet does not reflect any entry for that withdrawal.

xi) The handwritten ledger sheet incorrectly showed the sum of \$18,377.38 remaining after the payment of all the required creditor payments. On December 13, 2002, \$8,377.38 was transferred to another file for the same client and a \$10,000 cheque was issued to the Firm.

xii) Due to the failure to record the \$5,473.29 cheque, there was a trust shortage from December 13, 2002 to April 7, 2002, the date that the funds were transferred by Mr. Legge from another trust account held in the clients' name.

Client D

xiii) The Firm acted on behalf of a client, D., in a property purchase. On October 30, 2002, Mr. Legge issued a cheque to the vendor's solicitor in the sum of \$225,951.42. This cheque was negotiated on the same day.

xiv) On October 30, 2002, the handwritten ledger sheet for this client shows that the sum of \$224,760.42 was held in trust. A further cheque was issued on October 30 for \$110.00, but was not recorded on the ledger sheet. On November 2, 2002 a cheque was issued to pay the Firm's fees. The negotiation of these cheques resulted in a trust shortage with an increasing balance. This shortage was not substantively corrected until November 22, 2002, when the sum of \$1,840.00 was received from the client leaving a \$75.00 overdraft.

d) Mr. Legge breached Rule 3-56(1.2) by authorizing a payment from funds in trust when there were not sufficient funds held to the credit of the client on whose behalf the funds were paid with respect to his clients K. and F.C. Ltd.;

e) In relation to Client K Mr. Legge failed to record transactions in books, records, and accounts as required by the *Law Society Rules* in chronological order and in easily traceable form, contrary to Rule 3-59(3);

f) The Firm failed to maintain the required trust books, records and accounts, contrary to Rule 3-60(a), (b), (c) and (d);

g) The Firm breached Rule 3-61(1)(a) by failing to maintain general books, records and accounts including a general cash book or synoptic journal and (b) by failing to maintain an accounts receivable ledger or other suitable system to record all transactions in which a bill has been delivered or a disbursement made;

h) The Firm failed to maintain a proper billings file, contrary to Rule 3-62(1)(c);

i) The Firm failed to record each trust and general transaction within the required time frames,

contrary to Rule 3-63(1);

j) The Firm failed to record in his general books and accounts all funds received on account of fees or otherwise from or on behalf of clients, contrary to Rule 3-63(2);

k) The Firm failed to add and balance his trust and general cash book and synoptic journal at least monthly, contrary to Rule 3-64;

l) The Firm failed to make the required trust reconciliation not more than 30 days after the effective date of the reconciliation, contrary to Rule 3-65(4);

m) The Firm failed to retain the trust books, records and accounts relating to the most recent five-year period at his chief place of practice, contrary to Rule 3-82(2).

8. Mr. Legge acknowledges that he breached the Law Society accounting rules as set out in Paragraph 7.

9. The Report of Ms. Lehan dated April 16, 2003 describes the following deficiencies in Mr. Legge's practice, including:

a) The files contained a consistent pattern of disorganization, including:

i) loose documents and correspondence;

ii) few, if any, handwritten notes or references to telephone discussions;

iii) lack of correspondence on files including the absence of reporting letters to client and to banks;

iv) incorrect dates of reporting letters often incorrect or indiscernible dates upon which the documents were signed;

b) Inaccurate documents or documents amended by hand after being signed by clients;

c) Undertakings were not always fulfilled, such as undertakings to pay property tax, discharge builders' liens;

d) Builders' liens were not discharged in a timely manner on several files;

e) Failure to follow up on holdback funds due to a client, failure to provide State of Title Certificates to lenders, and failure to accurately report to clients.

10 Mr. Legge acknowledges that he failed to serve some of his clients in a conscientious, diligent and efficient manner so as to provide a quality of service at least to that which would be expected of a competent lawyer in a similar situation, contrary to Chapter 3, Ruling 3 of the *Professional Conduct Handbook*.

11. Mr. Legge acknowledges that he did not have an adequate knowledge of real estate law, practice and procedures to adequately represent his clients' interests effectively.

12. In relation to payroll deductions, from January 1, 2002 to December 31, 2002, the Firm owed \$9,025.71 in payroll deduction and had paid \$3,204.90, leaving a balance of \$8,772.42, which sum includes penalty, interest and corrections in relation to employment insurance and Canada Pension Plan. This sum was not paid at the time that the Discipline Committee directed the issuance of a citation.

13. Mr. Legge acknowledges that the Firm failed to remit employee source deductions, contrary to the *Income Tax Act*.
14. The Respondent acknowledged that the Firm failed to remit collected Goods and Service Tax (" GST") and Provincial Sales Tax (" PST") in a timely manner.
15. As at February 3, 2003, the sum of \$4,473.11 was outstanding in relation to the Social Services tax.
16. Mr. Legge acknowledges that the Firm collected PST funds as required by the *Social Service Tax Act*, R.S.B.C. 1996, but failed to remit such funds to the Government of the Province of British Columbia.
17. In relation to GST, as of April 11, 2002, the date upon which Mr. Kinsey attended the offices of the Firm, GST owing for the period October 1 to December 31, 2002, had not been remitted to Canada Customs and Revenue Agency.
18. Mr. Legge acknowledges that the Firm collected GST funds in payment of the GST as required by the Excise Tax Act, R.S.C. 1985, but failed to remit such funds to the Government of Canada.
19. In April 2003, Mr. Sarai paid all arrears of GST, PST and payroll deduction remittances on behalf of the Firm.
20. In relation to client R.K., Mr. Legge permitted a trust shortage in the amount of \$11,154.89 to exist from November 27, 2002 to January 20, 2003.
21. Mr. Legge did not immediately pay sufficient funds into the accounts to eliminate the shortage.
22. Mr. Legge did not immediately report the shortage and the circumstances surrounding it in writing to the Executive Director of the Law Society.
23. In relation of client F.C. Ltd., Mr. Legge permitted a trust shortage in the amount of \$ 5,473.29 to exist from December 13, 2002 to April 7, 2003.
24. Mr. Legge did not immediately pay sufficient funds into the accounts to eliminate the shortage.
25. Mr. Legge did not immediately report the shortage and the circumstances surrounding it in writing to the Executive Director of the Law Society.
26. On May 14, 2003, pursuant to Rule 4-13 of the *Law Society Rules*, the Discipline Committee resolved to recommend to the Chair of the Discipline Committee that there be a direction to issue a citation against Mr. Legge.
27. A citation dated June 20, 2003 was issued and served on Christopher Hinkson, Q.C., counsel for Mr. Legge, by way of a courier on June 20, 2003. Mr. Hinkson acknowledge service of the citation by way of letter dated August 26, 2003.
28. On November 10, 2003, the three Benchers, pursuant to s.39 of the *Legal Profession Act*, suspended Mr. Legge pending the disposition of the citation.

[11] The Agreed Statement of Facts which relates to the August 18, 2003 citations sets out as follows:

1. In a letter dated February 27, 2003, C.R. of Mainland Reporting Services made a complaint to the Law Society that Mr. Legge was rude to an employee of the company and that he made threatening comments.

2. On March 5, 2003, Howie Caldwell, Professional Conduct Staff Lawyer at the Law Society, wrote to Mr. Legge seeking an explanation to the complaint made by C.R.
3. As the Law Society did not receive a response from Mr. Legge, Mr. Caldwell wrote to Mr. Legge on April 4, 2003 and again on April 22, 2003, asking for a reply to his March 5, 2003 letter.
4. On April 29, 2003, Mr. Caldwell spoke by telephone with Mr. Legge. Mr. Legge denied the assertions of the complainant and assured the Law Society would be provided with his written response by April 30, 2003.
5. The Law Society did not receive a response from Mr. Legge.
6. On May 6, 2003, Mr. Caldwell wrote a further letter to Mr. Legge asking for a reply to his letters of March 5, April 4 and April 22, 2003, and noted that should Mr. Legge fail to respond to his letter within five calendar days, the matter would be referred to the Discipline Committee.
7. The Law Society did not receive a written response from Mr. Legge.
8. On June 5, 2003, pursuant to Rule 4-13 of the Law Society Rules, the Discipline Committee resolved to recommend to the Chair of the Discipline Committee that there be a direction to issue a citation against Mr. Legge for failing to respond to the Law Society concerning a complaint that he was rude to an employee of a court reporting company and that he made threatening comments, and the Chair so directed.
9. A citation dated August 18, 2003 was issued and served on Christopher Hinkson, Q.C., counsel for Mr. Legge, by way of a courier on August 18, 2003.

[12] In admitting the second Agreed Statement of Facts, counsel for the Respondent pointed out that the admission was subject to the Panel considering his letter to the Law Society, written on the Respondent's behalf (Exhibit 7) and the reply to that letter by Law Society staff (Exhibit 8).

[13] The Respondent testified on his own behalf. This Panel found the Respondent to be an unsatisfactory, evasive, and often incredible witness.

[14] This Panel, having reviewed both Agreed Statement of Facts, having heard the Respondent's testimony and having heard the submissions of counsel, find the Respondent guilty of professional misconduct and breaches of the Law Society Rules as follows:

- a) As to Count 1 of Exhibit 1, the June 20, 2003 citation, the Respondent breached Law Society Rules as set out in paragraphs a, b, and c as that paragraph relates to clients S and D, and d to m inclusive. We note that paragraph c, as it relates to clients K and F.C. Ltd. are dealt with later in paragraph 6 and 7.
- b) As to Counts 2 to 7 inclusive, this Panel finds the Respondent guilty of professional misconduct.
- c) This Panel notes that the Respondent's failures set out in paragraphs 4 and 5, failure to remit PST, GST and Employee Source Deductions, involve breach of trust.
- d) This Panel regards the Respondent's misconduct regarding Count 6 as particularly serious. The Respondent made an entry in a trust ledger to reflect a trust deposit that did not occur. His entry had the effect of covering up a trust shortage to anyone examining the ledger. The Respondent allowed that shortage to persist for almost two months, long after he had discovered it. He did not rectify the trust shortage until the subject property had been resold. The Respondent testified that he genuinely believed that money would be forthcoming from a client and that he felt, at the time, that such belief was

good enough to make a trust entry for a deposit that did not happen. This Panel does not find his explanation credible.

e) The panel is troubled, additionally, by the respondents failure to report this trust shortage to the Law Society as required by Law Society Rule 3-66 (2). The Member described this failure to report as an "oversight" and suggested that that should be contrasted with a conscious decision to not report the trust shortage. The Panel finds this written response from the Respondent to be facile and self serving. There is no excuse for a failure to comply with this particular reporting requirement and this Panel finds the Respondent's failure to do so to be an aggravating circumstance.

f) This Panel regards the Respondent's misconduct regarding Count 7 as particularly serious in that he allowed a trust shortage to continue for almost four months until representatives of the Law Society commenced their investigation of his practice.

g) Regarding the allegation in Exhibit #3, the August 18, 2003 Citation; this Panel finds the Respondent guilty of professional misconduct. It is critical to the Law Society's ability to regulate its members in the public interest, that those members be responsive to all requests for information made to them by the Law Society. It is the view of this Panel that, except in the most unusual of circumstances, a member's failure to respond to the Law Society will always constitute professional misconduct. In the particular facts of this matter there are no such extenuating circumstances and the finding of professional misconduct must follow.

h) The Panel also notes that the Respondent had retained counsel during part of the time period alleged in the citation and notes that his counsel had corresponded with the Law Society with a request for more time to review the Respondent's situation. The Respondent testified that his counsel had urged him to make the written response requested by the Law Society and that he had still failed to do so. This Panel does not feel called upon to rule on whether or not that fact that a lawyer who is the subject of a Law Society investigation and who retains counsel, is thereby relieved of his duty to respond, himself, to requests for information from the Law Society. The Respondent failed to respond to Law Society requests for information even in the face of his own counsel's recommendation and that failure continues to the date of this hearing.