

2004 LSBC 02

Report issued: February 6, 2004

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 Penalty

Hearing date: November 26, 2003

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

Counsel for the Law Society: Jessica Gossen

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

PENALTY

[1] Two citations against the Respondent came for hearing before this Panel on November 25, 2003. This Panel found the Respondent guilty of breach of Law Society Rules and of professional misconduct on all counts of the two citations.

[2] The allegations in the two citations are detailed in this Panel's decision on Facts and Verdict. Briefly, they involve:

- allowing substantial trust shortages to occur on client files and to continue for long periods of time
- failure to report trust shortages to the Law Society
- many breaches of Law Society Rules relating to trust and general accounts
- failure to serve clients in a conscientious, diligent and efficient manner
- failure to acquire and maintain adequate knowledge to conduct a real estate practice
- failure to remit collected GST and PST (which this Panel characterized as a breach of trust)
- failure to remit employee Income Tax source deductions (also a breach of trust)

[3] This Panel considers the instances of professional misconduct to be most serious.

[4] In addition the Respondent had still not, by the date of this phase of the hearing, remedied the misconduct that was the subject of the second citation - failure to respond to Law Society requests for information. The Respondent stated that he couldn't understand why the Law Society Complaints Department would give this complaint the time of day. This Panel rejects the Respondent's excuse that he

did not have the use of a computer with which to write and answer as being completely inadequate and of a piece with his testimony and demeanor before the Panel - evasive and not believable.

[5] This Panel is concerned about the variety and number of breaches of Law Society Rules. They indicate a lack of interest or concern in the Rules with which the Law Society regulates the profession and tries to protect the public. This Panel is particularly concerned by the casual attitude that the Respondent displayed. For example, he indicated that he and his partner had acquired a law office accounting program but simply didn't use it and told this Panel " the vehicle was there, it just didn't have any gas in it" . As another example, with respect to his efforts to conform with trust and general record keeping, he described them as " slap happy" . The Respondent displayed the same attitude to the requirement of the May 30, 2003 s. 39 Panel that he employ a bookkeeper as a condition of practice. He testified that he just didn't have the money and so he went into practice anyway. As he put it, " I tended to put a blanket over my head" .

[6] This Panel was given the Respondent's Professional Conduct Record. It has a consistent theme of the Respondent failing to abide by Law Society rules and of being given chances to practice law appropriately and on specific terms which he then ignored.

[7] The Respondent was called to the Bar of B.C. in 1967. He practiced full time in the Vancouver area under the style of Legge & Company until 1996. He had a successful, predominantly litigation practice. For the first twenty five years he was the subject of relatively few complaints, then he had ten complaints to the Law Society between 1993 and 1998. He practiced part time in 1996 and then allowed his membership to lapse for non-payment of fees for 1997. In April of 1997, he was readmitted to practice on a part time basis. His membership lapsed briefly that year and he was readmitted to practice on a full time basis on October of 1997.

[8] In late 1997, the Respondent borrowed sufficient funds to purchase a law practice in Sechelt and shortly after that he acquired the Vancouver practice of a deceased friend - again, with borrowed funds. Neither his finances nor his health were up to carrying on one practice, let alone two and in 1998(?) the staff of his Sechelt office complained to the Law Society that the Respondent had substantially abandoned his law practice there. A custodian was then appointed on March 24, 1998.

[9] The Respondent was subject of a Conduct Review in February of 1998. Later that year a citation was authorized alleging irregularities in his reporting to the Law Society. The citation was later rescinded subject to the Respondent's undertaking not to return to practice without first obtaining a satisfactory psychiatric report.

[10] The Respondent failed to pay his annual Law Society fees for 1999 and ceased to be a member at the end of 1998. In 1999 he applied for reinstatement but the Credentials Committee of the Law Society ordered a hearing into his fitness to return to the practice of law. At the Credentials hearing held in 2000, the Panel found that the Respondent's practice difficulties were attributable to depression. The Panel ordered that he be reinstated subject to regular reporting to the Law Society outlining the nature of his practice and, also regular reporting from his doctor.

[11] The Respondent subsequently practiced as an associate with two different firms between October of 2000 and May of 2002, but found the terms of his association unremunerative. At the second firm he met an articled student and once that student was called to the Bar, the Respondent practiced with him in partnership from May of 2002 until April of 2003. In May of 2003, the Law Society applied to have the Respondent suspended from practice pursuant to s. 39 of the *Legal Profession Act*. A Panel of Benchers declined to suspend him, but required that he fulfill certain conditions before returning to practice. The Respondent returned to practice on August 21, 2003, although it subsequently appeared that he had not fulfilled one of the requirements of the May, 2003 Panel, namely that he employ a bookkeeper. The

Respondent practiced from August 21st until November 10, 2003, when he was suspended from practice by another s. 39 Panel. This Panel has not been advised of the reason for the November 10th suspension and Law Society counsel advised this Panel that the reasons for that suspension were not relevant to this matter.

[12] The Respondent was subject of another Conduct Review in June of 2003, arising from a complaint that in October of 2001, he had missed a limitation date. It was the Respondent's opinion that he had not missed a limitation date at law, although he did report the matter to the Law Society insurer. He admitted that for ten months he failed to advise his client of the possibility of his having missed a limitation date and furthermore, he had failed to do so despite repeated urgings by a lawyer with whom he had been associated in October of 2001.

[13] The Conduct Review Subcommittee noted that when the Respondent was asked if he had advised Law Society staff of the breakdown of his partnership in April of 2003, as required by the Panel which allowed him to return to practice, he first stated that he had done so but later agreed that he had not. Indeed, by June 17, 2003, he had not submitted the practice report due April 1, 2003.

[14] The Conduct Review Subcommittee noted that the Respondent stated that he did not feel that he was suffering from a clinical depression at the time of the Conduct Review. The Panel recommended, however, that the Respondent be evaluated by a psychiatrist and that the Law Society underwrite the psychiatrist's fee. The Subcommittee noted that " We are deeply concerned that his ability to continue to practice is questionable and it must be monitored carefully."

[15] The Respondent's mental health had been a concern to the Law Society for some time. It is of particular concern to this Panel because the Respondent appears to have acknowledged his problems in different degrees at different times.

[16] The Panel at the reinstatement hearing noted that the Respondent received treatment in 1998 and 1999 which improved his health to the point that his psychiatrist indicated that he was fit to return to the practice of law but warned that " He can have another episode of depression at some time in the future" . This Panel contrasts the extensive evidence regarding depression led before the 2000 reinstatement Panel, including the Respondent's statement to the Conduct Review Subcommittee that as of June, 2003 he did not feel he was suffering from clinical depression, with the Respondent's evidence at this Hearing that he did not attribute this misconduct or breaches of the Rules to depression except to say that at the time of the breaches his professional and personal life " became pretty hairy" .

[17] The Respondent's history and, perhaps, part of his problems must be seen in the context of his investments in the stock market, especially in the notorious, failed mining company, Bre-Ex. The Respondent invested heavily in that stock so that when it reached its top value, his net worth on paper was about \$15,000,000. When Bre-Ex collapsed, so did the Respondent's net worth. However, the Bre-Ex collapse did not result in his immediate ruin. Months after the collapse of Bre-Ex he still had sufficient credit to borrow enough funds to purchase two law practices. This Panel, notes, as well, that both the Respondent's depression and the upsurge of complaints against him to the Law Society predate the Bre-Ex collapse.

[18] Law Society counsel urged this Panel to impose a penalty consistent with a finding of dishonesty and urged a significant suspension, as well as order that the Respondent pay costs. Law Society counsel pointed out the factors enumerated in *Ogilvie* and suggested that this Panel emphasize the element of deterrence. Law Society counsel urged the Panel to require the Respondent to participate in a further psychiatric evaluation, to be paid for by the Law Society.

[19] Counsel for the Respondent acknowledged that this Panel is not bound by precedent but should recognize that it is desirable that there be consistency in Law Society decisions. He argued that the usual penalty for misconduct similar to the Respondent's has involved some combination of a fine, a reprimand and an order of some costs. He advised the Panel that the Respondent cannot afford a fine. He submitted that the Respondent was, as a result of the s. 39 Hearing on May 30, 2003, effectively suspended until he had met that Panel's requirements, which was almost three months. He also pointed out that the Respondent has been under an additional suspension since November 10, 2003. He asked this Panel to credit the Respondent with that time under suspension and submitted the total time of suspension time exceeds the penalties in the various precedents cited. His position is that this Panel should reprimand the Respondent and that it is unrealistic to expect that the Respondent will be able to find another lawyer willing to employ him or be his partner. He suggested that this Panel impose a requirement that the Respondent enter into a Practice Supervision Agreement acceptable to the Law Society. The Respondent did not take issue with a requirement that he participate in a further psychiatric evaluation.

[20] Counsel for the Law Society and the Respondent have drawn this Panel's attention to a number of precedents involving lawyers who have been guilty of Rule breaches and misconduct similar to those of the Respondent. This Panel will not discuss all of the cases submitted by counsel but will deal with cases we consider relevant - *Ogilvie*: Discipline Case Digest 99/25, *Bridal*: Discipline Case Digest 02/12, *Andres-Auger*: Discipline Case Digest 94/11, *Ashton*: Discipline Case Digest 93/3 and *Kruse*: Discipline Case Digest 02/09.

[21] *Ogilvie* provides a template of sorts with which Law Society discipline panels can assess the seriousness of a particular case. Without using *Ogilvie* as a complete check list, this Panel will deal with aspects of the factors mentioned which it considers relevant.

[22] The age and experience of the Respondent: the age and experience of the Respondent weigh against him. He is a senior practitioner and should have known better.

[23] The previous character of the Respondent, including details of prior discipline: this report has summarized the Respondent's discipline history and the apparent lack of improvement, resulting in this hearing. Positive letters of reference were filed in the April, 2000 Conduct Review and showed the Respondent enjoyed a good reputation in the profession then. No such evidence was led at this hearing.

[24] The advantage gained, or to be gained by the Respondent: there was no apparent, long range advantage to be gained by the Respondent by his conduct, save to keep the leaky ship of his practice afloat a while longer.

[25] The number of times the offending conduct occurred: the Respondent's offending conduct occurred over the whole period of his last partnership. He allowed trust shortages to go on for months. At the time of the hearing, he still had not replied substantively to the Law Society request that he answer the accusation that was the substance of the second citation - a period of eight months.

[26] Whether the Respondent has acknowledged the misconduct and taken steps to disclose or redress the wrong and the presence or absence of other mitigating circumstances: the Respondent was cooperative with the Law Society auditor and the person sent to review his practice when he investigated the Respondent's practice in the Spring of 2003. He was prepared to negotiate, at least, a conditional admission and did expedite this Hearing by agreeing to a Statement of Facts rather than requiring the Law Society to prove the citations. However, he tended to gloss over the seriousness of his misconduct and did not point to any mitigating circumstances for it, other than his insolvency. And, as previously noted, his failure to respond to the Law Society request for information was still ongoing at the time of the Hearing.

[27] The possibility of remediating or rehabilitating the Respondent: this Panel is most concerned about the likelihood of rehabilitating the Respondent. He has consistently ignored Law Society Rules and appears to think that obligations imposed upon him as a condition of returning to practice can be ignored. As previously noted, he failed to file a quarterly report ordered to do so by the reinstatement Panel in 2000, and he failed to employ a bookkeeper as required by the s. 39 Panel which allowed him to continue to practice. This Panel shares the view of the 2003 Conduct Review Subcommittee when they stated " We are deeply concerned that his ability to continue to practice is questionable and that it must be monitored carefully" .

[28] The impact of the proposed penalty on the Respondent: the Panel is aware that any monetary penalty or award of costs against him will have a severe impact on the Respondent because of his insolvency and that a suspension will impact his ability to earn a living as a lawyer. The Panel notes that the living he has made as a lawyer had, at best, been minimal since 2000.

[29] The need for specific deterrence: the Respondent has repeatedly been given chances to continue to practice law if he would comply with certain conditions and he has repeatedly abused those opportunities. His casual attitude towards maintaining financial and other records and to responding to requests for information from the Law Society dates back years. This Panel feels that it must be brought home to him that the Law Society requirements are a mandatory condition of his continuing to practice. They are not optional.

[30] The need for general deterrence: all lawyers need to know that this type of misconduct is serious and will not be tolerated. Lawyers cannot be casual about handling trust monies, replying to Law Society communications or conforming to any other Law Society Rules. Members of the public must have confidence that monies they pay to a lawyer in the course of business or as taxes on lawyers services will be used for the purposes for which they were paid and will not be handled in a way that the Respondent himself described as a " slap happy" fashion.

[31] In considering the range of penalties in similar cases, this Panel considers *Bridal*, *Andres-Auger*, *Ashton* and *Kruse* to be most on point. *Bridal* was guilty of failing to respond to Law Society requests for information, he used his trust account for non-trust transactions and he violated other Law Society financial Rules. *Bridal's* counsel and Law Society counsel made joint submissions as to penalty, which the Panel followed. In *Bridal* there was no reference to a previous discipline history. This Panel regards *Bridal* as being on the most lenient end of the penalty scale for the conduct proven. While lenient, *Bridal* did have severe restrictions put on his future practice - he was allowed to practice only as an employee of another lawyer and could not handle trust funds. The Respondent in the case before us says he could not fulfill such a term and asks to be able to practice on his own, subject to a Practice Supervision Agreement.

[32] *Andres-Auger* mishandled trust funds and failed to keep financial records in the manner required by the Law Society and failed to file a Form 47 for nine months, despite repeated requests from the Law Society. She was fined \$1,750.00 and ordered to pay costs of \$6,000.00 and was required to undergo a Credentials hearing before she could be reinstated. The Panel in that case held that a fine rather than suspension was appropriate because of the time that the member had been out of practice - over fourteen months - and because of her unique personal circumstances.

[33] *Ashton* was found guilty of creating trust shortages on his files and failing to remedy them promptly and of transferring funds from trust before the work was completed. He also failed to maintain financial records as required by the Law Society. The Panel in *Ashton* concluded that his misconduct arose from his inexperience, stress and personal problems. The Panel noted that he had taken steps to remedy his difficulties prior to investigation by the Law Society and but for those circumstances a larger fine or suspension could be warranted. He was reprimanded, fined \$1,000.00 and ordered to pay \$2,850.00 in

costs. As well, he was required to practice only as an employee or partner of another lawyer.

[34] *Kruse* was an egregious example of failure to respond to Law Society communications. As in the case before this Panel, at the tie of hearing the member had still not communicated as requested by the Law Society. *Kruse* was fined \$3,000.00 for failure to reply. By the time of the hearing he had left the practice of law for other endeavors and therefore a suspension would not have been practical.

[35] In the case before us, the Respondent was not inexperienced, as in the *Ashton* case. He was a lawyer of long standing who should have known better and simply disregarded rules and trust obligations. Also unlike *Ashton* the Respondent had done nothing to remedy the accounting chaos of his partnership. When given another opportunity to correct the error of his ways, he responded by ignoring the requirements placed on him. Unlike *Andres-Auger* the Respondent has not been out of practice for over a year. It was about two and a half months before he could fulfill the requirements of the May 2003 s. 39 Panel. This Panel cannot comment on the effect or relevance of his suspension since November 10, 2003.

[36] The misconduct in *Bridal* is, on its face, similar to the misconduct of the Respondent. However, as the *Bridal* case contains no reference to his previous discipline history, it is difficult to compare the two cases.

[37] This Panel agrees with Law Society counsel and counsel for the Respondent that it would be appropriate to approach penalty "globally", i.e. impose one penalty for all the counts of the two citations rather than penalize each count individually.

[38] In arriving at its decision, this Panel is most concerned with:

- deterrence of the member. This Panel has not been impressed with the Respondent's attitude towards his misconduct, as demonstrated during this Hearing.
- Maintaining the public's confidence in the legal profession. The notorious case of *Martin Wirick* has brought the Law Society governance very much into the public eye. The Law Society must be seen to ensure proper care is taken of the money the public entrusts to lawyers and that lawyers are accountable for the handling of those funds.

[39] This Panel is of the view that an appropriate penalty in this case is an aggregate 8 month suspension. We are prepared to credit the Respondent with the time he spent out of practice during the summer of 2003 and the time between the Penalty Hearing and the handing down of this decision on Penalty.

[40] Accordingly, the Respondent is ordered suspended for a further 3 months from the date of issuance of this decision.

[41] This Panel further orders that prior to returning to practice:

1. The Respondent will submit to a psychiatric evaluation satisfactory to the Law Society, performed by a psychiatrist acceptable to the Law Society, at the Law Society's expense.
2. The Respondent will enter into a Practice Supervision Agreement, on terms acceptable to the Law Society, with the Practice Supervisor to be paid by the Respondent.
3. The Respondent will provide a substantive response to the Law Society requests for information that were the subject of the August 18, 2003 citation.

[42] With respect to costs, Law Society counsel submitted a Bill of Costs in the amount of \$14,692.00. The sum includes costs for the s. 39 Hearing in May, 2003, and two days hearing for November 25th and 26th, 2003. Counsel for the Respondent has pointed out that the November hearing involved two half days rather

than a full two days and has argued that, since there was mixed success before the s. 39 Panel in May, 2003, the Respondent should be spared the costs of that hearing.

[43] This Panel orders that the Respondent pay costs in the amount of \$7,407.00, payable in monthly installments of \$350.00 per month, commencing July 1, 2004.