

2004 LSBC 07

Report issued: March 23, 2004

Citation issued: November 25, 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: March 16, 2004

Panel: Grant C. Taylor, Single Bench Panel

Counsel for the Law Society: Jessica Gossen

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

[1] On March 16, 2004, this Panel found that the Respondent's conduct as set out in the Schedule to citation constituted professional misconduct. I am now required to give consideration to the submissions made by counsel for the Law Society and the Respondent in relation to penalty.

[2] Essentially, a joint submission was made for a reprimand.

[3] My authority for imposing a penalty after an adverse determination is made against a Respondent is subsection (5) of Section 38 of the *Legal Profession Act* which provides that a panel must do one or more of the following:

- (a) reprimand the respondent;
- (b) fine the respondent an amount not exceeding \$20,000.00;
- (c) impose conditions on the respondent's practice;
- (d) suspend the respondent from the practice of law or from practice in one or more fields of law:
 - i) for a specified period of time,
 - ii) until the respondent complies with the requirement under paragraph (f),
 - iii) from a specific date until the respondent complies with the requirement under paragraph (f),or
 - iv) for a specific minimum period of time and until the respondent complies with the requirement under paragraph (f);
- (e) disbar the respondent;
- (f) require the respondent to do one or more of the following:

- i) complete a remedial program to the satisfaction of the Practice Standards Committee,
- ii) appear before a board of examiners appointed by the Panel or by the Practice Standards Committee and satisfy the board that the respondent is competent to practice law or to practice in one or more fields of law,
- iii) appear before a board of examiners appointed by the Panel or by the Practice Standards Committee and satisfy the board that the respondent's competence to practice law is not adversely affected by physical or mental disability, or dependency on alcohol or drugs,
- iv) practice law only as a partner, employee or associate of one or more other lawyers,
- v) prohibit a respondent who is not a member but who is permitted to practice law under a rule made under s. 16(2)(a) or 17(1)(a) from practicing law in British Columbia indefinitely or for a specified period of time.

[4] There appears to be a number of options available to the Panel in imposing penalty once a determination concerning the Respondent has been made.

[5] The Respondent has a substantial history with the Law Society.

[6] Currently the Respondent is 64 years of age.

[7] I was referred to the decision of Ralston S. Alexander, Q.C., sitting as a single Bench Panel, concerning Brian Maurice Legge as an applicant for reinstatement which is cited as [2000] LSBC 07. This hearing took place on April 4, 2000. A brief bit of background was provided to me by counsel for the Law Society and for the Respondent, however, I will quote extensively from the decision of Mr. Alexander in accounting for some of the Respondent's background.

" For nearly 30 years, Mr. Legge operated a successful, primarily litigation, practice in Greater Vancouver, coming to the Law Society's attention on only a limited number of occasions and that those few incidents, in the euphemistic language favoured by Law Society computers, 'resolved after intervention'.

In 1966, Mr. Legge became heavily invested in the stock market and in particular, although not exclusively, in Bre-Ex Mines. As a result of the considerable market interest in that stock, and the sizeable holding enjoyed by Mr. Legge, his net worth in early March of 1997 had grown to approximately \$16 million. At this time, he was devoting his entire attention to his investment portfolio and had for all practical purposes, ceased the practice of law. His membership in the Law Society lapsed on December 31, 1996 due to non-payment of the 1997 practice fees instalment.

The March 27, 1997 collapse of Bre-Ex took Mr. Legge from a position of considerable worth to a person entirely without means and in fact, due to the margined nature of his investment portfolio, he became an instant bankrupt.

With family responsibilities to meet, he immediately applied for reinstatement to the Law Society, and he was reinstated on April 27, 1997, however his practice had considerably deteriorated due to inattention while he concentrated on the investment portfolio, and he was, not surprisingly, suffering a relapse of a depression ailment which had previously manifested itself, and about which I will have more to say shortly.

In an attempt to revitalize his income stream from the practice of law, Mr. Legge acquired, in the late

fall of 1997, an existing law practice under the name " Welsh and Gray" in Sechelt, on the Sunshine Coast. This practice, including some real property assets, was purchased entirely with the proceeds of funds borrowed by Mr. Legge from his bank. For reasons which are likely rooted in Mr. Legge's health problems, the acquisition of the Sechelt practice did not address the income deficiencies. In what can only be described as an act of sheer folly by a desperate man, Mr. Legge acquired an additional practice in Greater Vancouver, again with the proceeds of bank loans. Subsequent examination by Law Society Competency staff described either practice as requiring Mr. Legge's full time attention, and in fact due to his deteriorating health, he was unable to devote any attention to either practice.

At about the same time, the staff in the Sechelt office lodged a comprehensive complaint with the Law Society alleging a substantial abandonment by Mr. Legge of responsibility for the work of the office. This was the first of an outbreak of client complaints to the Law Society about Mr. Legge which caused the Competency Committee to order a practice review. Before that process could be completed, the Supreme Court of British Columbia, on the petition of the Law Society, appointed a custodian to take control of the practices of Mr. Legge and he was suspended from the practice of law on March 24, 1998. On May 20, 1998, Mr. Legge made a General Assignment in Bankruptcy.

In July of 1998, the Discipline Committee of the Law Society issued a citation against Mr. Legge accusing him of intentionally misleading the Law Society in respect of a conflict of stories which arose on a comparison of conflicting explanations for the reasons that Mr. Legge failed to renew his practising certificate on December 31, 1996. On his Application for Reinstatement, submitted in April of 1997, Mr. Legge indicated that the reason for his ceased membership in the Law Society was " retirement" . In subsequent correspondence with various members of the Law Society Complaints staff, Mr. Legge, when explaining his having engaged in several matters which clearly constituted the practice of law while not being a member of the Law Society, described his failure to renew as being the result of " inadvertence" . The citation also alleged an intent to mislead the Law Society as indicated by an incorrect answer to the question on the Application for Reinstatement which deals with previous mental health issues.

On December 31, 1998, Mr. Legge's membership in the Law Society lapsed again due to non-payment of annual fees, and around this cessation of membership, there was no issue as to its cause. Mr. Legge had simply and entirely run out of funds from all available sources.

On April 6, 1999, after the expiration of the minimum statutory period, Mr. Legge obtained a discharge in the bankruptcy proceedings.

In May of 1999, upon representations by counsel, the Discipline Committee of the Law Society was persuaded to rescind the citation conditional upon Mr. Legge's undertaking to not return to practice until he produced a satisfactory psychiatric report. The Discipline Committee further referred to the Credentials Committee⁴ the matter of any Application for Reinstatement which might be forthcoming from Mr. Legge.

In anticipation of an early successful reinstatement application, Mr. Legge commenced employment as a paralegal in May of 1999 and launched an Application for Reinstatement at that time. On July 8, 1999, the Credentials Committee ordered that a hearing be held to enquire into Mr. Legge's fitness to return as a member of the Law Society, and this Hearing is a result of that order. Counsel for Mr. Legge offered critical comment of the Law Society with respect to the length of time which had elapsed between Mr. Legge's Application for Reinstatement and the date of this Hearing.

Health Issues

Mr. Legge has suffered, in varying degrees of intensity, from a depression illness which first manifested itself in the late spring of 1995. This illness was treated by Dr. Maelor Vallance, a practising psychiatrist, on a referral from Mr. Legge's family doctor. Dr. Vallance described the 1995 incident as being " a major depressive episode, mild in intensity" . This ailment was treated with medication and Mr. Legge responded to that medication which was ultimately tapered off and concluded.

The depression resurfaced with a vengeance in the spring of 1997. It is probable that the depression had returned before the collapse of Bre-Ex, but that event would be likely to exacerbate an already frail psychological condition.

Mr. Legge was not treated for the second depression incident until July of 1997, by which time he was in near crisis status. He was once again treated with anti-depressive medications, and apparently did not respond as well the second time around. Dr. Vallance was again involved in Mr. Legge's treatment in the summer of 1997 and observed that he had some concerns at that time about whether Mr. Legge was fit to continue with the practice of law.

Mr. Legge appeared at the St. Paul's Psychiatric Out-Patient Clinic in April of 1998 at which time he was in some considerable distress. This period in his life coincided with the collapse of the two purchased law practices, and the appointment of a custodian for them.

The course of treatment over the second half of 1998 and the spring of 1999 brought Mr. Legge's healthy to a point where Dr. Vallance wrote, on June 1, 1999 of Mr. Legge as follows:

'He is now sufficiently recovered from his depressive illness to be considered fit to return to the practice of law'.

Dr. Vallance elaborated on these thoughts in a July 5, 1999 letter to the Law Society where he observed:

'His depression is now in remission and given previous reoccurrence, he should remain on anti-depressant medication for at least another year. He can have another episode of depression at some time in the future, but he is aware of the symptoms, as is his wife, and such an episode is quite unlikely to start abruptly so there would be time to intervene before the depression is significant and would be likely to progress slowly.

I saw him most recently on July 5, 1999 and his symptoms are now in remission.'"

[8] This Panel was also advised that the Respondent was subject to a Discipline Hearing Panel on November 25th and 26th, 2003 and that the decision of the Hearing Panel was issued on February 6, 2004, cited as 2004 LSBC 02. At that time two citations against the Respondent were set for hearing. The Panel found the Respondent guilty of breach of Law Society Rules and of professional misconduct on all counts of the two citations. Briefly, the two citations involved:

- 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 the 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)

[9] In addition, the Respondent had still not by the date of the Penalty phase of the hearing remedied the misconduct but was the subject of the second citation - failure to respond to Law Society requests for information.

[10] The penalty imposed on the Respondent as a result of the decision issued February 6, 2003 was that he be suspended an aggregate eight months but was allowed credit 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 a decision on penalty.

[11] Accordingly, the Respondent was ordered suspended for a further three months from the date of issuance of the decision or until May 6, 2004. The Respondent is, therefore, currently serving his suspension and will not be able to return to practice until May 6, 2004. It is also to be noted that the Panel further ordered that prior to returning to practice:

- i) 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;
- ii) 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; and
- iii) the Respondent will provide a substantive response to the Law Society's requests for information which were the subject of the earlier citation dated August 18, 2003.

[12] As well, the Respondent was ordered to pay costs in the amount of \$7,407.00 payable in monthly instalments of \$350.00 per month commencing July 1, 2004.

[13] Counsel for the Law Society provided me with the cases of *Ogilvie* [1999] LSBC 17; *Cherney* [2000] LSBC 09; *Currie* Discipline Case Digest 90/17; *Goeujon* [2001] LSBC 28; and *Grant* [2003] LSBC 09.

[14] The cases were provided by counsel for the Law Society as being analogous to the penalty to be imposed for the delict found in the citation in the instant case.

[15] In the *Cherney* matter, the Panel found that Ms. Cherney had provided a statement to the Law Society which had been misleading and also that she failed to fulfill an undertaking given to the Law Society while she was an articling student. One of the terms of the undertaking was that she undertook to provide continued reports from her debt counsellor confirming that she had taken steps to satisfy her debts. A finding of professional misconduct was made with respect to both counts 1 and 2. The Hearing Panel reprimanded the Respondent and ordered that she pay costs in the amount of \$1,000.00 payable 12 months after she returned to practice as a lawyer.

[16] The Panel made the point that it was a serious matter to breach an undertaking and felt that such a breach must be brought home both to the Respondent and the profession at large.

[17] In the matter of *Bert Donald Currie*, the member had appeared in Court intoxicated by alcohol and subsequently sent a letter to the Law Society undertaking not to consume alcohol. He thereafter breached that undertaking. The member admitted that the breach of his undertaking as well as his conduct in

appearing in Court while intoxicated constituted professional misconduct. The Panel which heard the case determined that he be reprimanded, and, as well imposed certain conditions involving counselling, providing urine samples for analysis, and attendance at Alcoholics Anonymous.

[18] In the matter of *Gerard Abraham Goeujon*, the member had been retained by another lawyer to represent a client in an extradition hearing for the limited purpose of seeking the client's release from custody. As Mr. Goeujon was subject to a practice restriction imposed by the Credentials Committee to practice only criminal law, he was not entitled to appear as counsel at the immigration matter. The Hearing Panel found that Mr. Goeujon's conduct in practicing immigration law while prohibited from doing so, constituted professional misconduct. In determining penalty, the Panel considered a number of factors including the fact that Mr. Goeujon's representation of the client was limited to an immigration bail hearing, similar to Provincial Court bail hearings, in which Mr. Goeujon was permitted to represent clients. The Panel ordered that he be reprimanded.

[19] In the matter of *Laura Lee Grant*, it appears that while representing a client in a family law matter, the member had the client pencil in a Financial Statement which was delivered to the member's office. The client was unable to remain and could not wait for the document to be typed up. The member then permitted the client to sign an affidavit on a blank form of Financial Statement and did so on the basis that the client specifically swore as to the truth of the pencilled version of the Financial Statement and then authorized the member's staff to type up the blank Financial Statement in identical form as to the pencilled version. The member admitted and the Discipline Hearing Panel found that the member's conduct in allowing her client to sign an affidavit on an incomplete Financial Statement constituted professional misconduct. The member was reprimanded and ordered to pay \$750.00 as costs of the hearing within three months.

[20] The question I have for determination in the circumstances is whether a reprimand is sufficient as a general deterrence to the membership at large in a situation where the member is required to self report on a quarterly basis and failed to do so after five reminder letters were sent to him from the Credentials Committee.

[21] The Respondent ultimately did provide a letter to the Credentials Committee dated June 23, 2003, even though it was supposed to have been provided by April 1, 2003.

[22] During submissions it became apparent that the Respondent's office was being audited by the Law Society in April, 2003. I asked counsel for the Law Society about this and she conceded that the Law Society knew what was going on in Mr. Legge's office and that to a certain extent, these matters were referred to in the letters written to Mr. Legge by Leslie Small, Legal Assistant to the Credentials Committee.

[23] The May 6, 2003 letter from Leslie Small to Mr. Legge says in part: " I am aware that the Law Society recently conducted an audit of (your firm) . . . " .

[24] When Mr. Legge finally wrote his letter to the Law Society dated June 23, 2003, he said: " If my April 1, 2003 report had been delivered in a timely fashion it most certainly would have made reference to the examination of the files of (my firm) by Ms. Lehan and Mr. Kinsey."

[25] Counsel for the Law Society in essence conceded that it was likely that there was so much going on in Mr. Legge's office in April of 2003, that he was just unable to deal with it, or at least she takes that from his letter of June 23. In any event, the Law Society knew what was going on - the Respondent just hadn't self reported what was already known to the Law Society, remembering at all times that it was a condition of his return to practice that he do so.

[26] Having reviewed the previous history of the Respondent as set out herein, plus the case law provided by counsel for the Law Society, and taking into account the submissions of counsel, the fact that the

Respondent did not breach an undertaking, the fact that the Respondent is currently under suspension and when the suspension ends, will still have some conditions to fulfill before being able to return to practice, I have satisfied myself that the principles of specific and general deterrence will be met by reprimanding the Respondent. Accordingly, I order that the Respondent be reprimanded. There is no order as to costs as no costs were sought.

[27] The Executive Director is instructed to record this finding of professional misconduct on the Respondent's professional conduct record.

[28] Publication of this finding is to be made to the profession in the normal course.