

## Admission to Discipline Committee

### AGREED STATEMENT OF FACTS

Jacqueline Levesque

Called to Bar: May 20, 1994

Ceased membership: January 22, 2010

Admission accepted: May 12, 2011

Counsel: Susan Coristine on behalf of the Law Society; Ms. Levesque acting on her own behalf

### BACKGROUND

1. The Respondent was a member of the Law Society of British Columbia from 20 May 1994 until she voluntarily resigned on 22 January 2010, with the following qualifications:

(a) She voluntarily ceased to be a member on or around January 1, 1998 but was reinstated on May 1, 1998; and

(b) She voluntarily ceased to be a member on or around March 17, 2001 but was reinstated on March 3, 2003.

2. She practiced as an associate at Collier Levine (“Collier”) from September 2003 to September 2005, and as a sole practitioner from September 2005 to 22 January 2010.

3. The Respondent’s practice involved assisting survivors of Indian Residential Schools in making claims against the Government of Canada (“Canada”). The claim process evolved over time as follows:

(a) Canada initially offered an Alternative Dispute Resolution (“ADR”) process for claimants who were sexually or physically abused.

(b) The ADR process was replaced with the Indian Residential School Settlement Agreement (“ the Agreement”), which provides processes in which claimants can bring one or more claims:

(i) An Independent Assessment Process (“IAP”) is available for claimants who were sexually abused, physically abused, and experienced loss of opportunity or loss of income;

(ii) A Top-Up award process is available for claimants who brought claims under the ADR process but were entitled to a further award for loss of opportunity; and

(iii) A Common Experience Payment (“CEP”) process is available for claimants who did not experience sexual abuse, physical abuse, or loss of opportunity or income flowing from that abuse; but otherwise attended an Indian Residential School.

Under the Agreement, Canada pays counsel 15% of the claimant’s award as counsel fees. With the client’s written agreement, counsel can charge a further contingency fee to a maximum of 15%.

## **CONDUCT RELATING TO JF**

4. The Respondent represented JF while the Respondent was an associate at Collier. When the Respondent started her own practice, JF left Collier and retained the Respondent.
5. JF had a written contingency agreement with Collier, but did not enter into a written contingency agreement with the Respondent.
6. In or around March 2006, Canada awarded JF \$196,289, which included the 15% contingency fee payable to the Respondent by Canada. The Respondent paid herself a 10% contingency fee on top of the 15% she received from Canada before disbursing the remaining funds to JF.
7. The Respondent admits that she took the 10% contingency fee knowing that she was not entitled to do so in the absence of a written agreement, contrary to Rule 8-3 of the Law Society Rules, and that her conduct amounts to professional misconduct.

## **CONDUCT RELATING TO RA**

8. The Respondent represented RA in his Residential Indian School claim.
9. Under the terms of their contingency fee agreement, RA agreed to pay the Respondent 10% of his award in addition to the 15% paid by Canada if he received a reward for income loss.
10. Under the Agreement process the Adjudicator who adjudicates the claim has the authority to review lawyers' accounts, either as a result of a request by the client or on the adjudicator's own initiative, to ensure that any amount charged in addition to the 15% paid by Canada was fair and reasonable.
11. RA's IAP hearing was held on 30 September 2008. The Adjudicator SR presided. At the close of the hearing, SR asked RA to sign a document indicating whether or not he wanted the Respondent's account reviewed. RA indicated on the document that he wanted the account reviewed.
12. On 16 December 2008, the Deputy Chief Adjudicator wrote to SR confirming that RA had asked for a fee review and copied the letter to the Respondent.
13. On 23 February 2009, Canada wrote to the Respondent indicating that RA was awarded \$67,518.21, which included the 15% contingency fee payable to the Respondent by Canada.
14. On 5 March 2009, the Respondent's assistant contacted SR and informed her that RA did not want a fee review. SR subsequently telephoned RA who told her he did want a fee review. SR decided to conduct a fee review on her own initiative and on 18 March 2009, wrote to the Respondent indicating that she had independently decided to conduct the fee review.
15. On 23 March 2009, the Respondent issued a Statement of Account in which she charged RA a 10% contingency fee on top of the 15% paid by Canada, and disbursed the remaining funds.
16. On 15 April 2009, SR conducted the fee review, with RA and the Respondent attending by teleconference. During the course of the hearing, RA stated that he believed that the fee the Respondent charged him was fair.
17. On 2 October 2009, SR issued a ruling in which she concluded that the Respondent was not entitled to the 10% contingency fee the Respondent charged on top of the 15% and reduced the Respondent's fees by \$5,800.
18. The Respondent repaid RA.

19. The Respondent admits that she paid herself the 10% contingency fee knowing that she was not authorized to do so under her contingency agreement with RA, contrary to Rule 8-3 of the Law Society Rules.

20. The Respondent admits that she took 10% fee from trust when she knew SR would be conducting the fee review and that the fees were therefore under dispute, contrary to Rules 3-57 of the Law Society Rules.

21. The Respondent further admits that her conduct amounts to professional misconduct.

## **CONDUCT RELATING TO SR**

22. On 12 May 2009, the Respondent wrote to the IRSRC Chief Adjudicator seeking a review of SR's decision. In that letter the Respondent stated that:

(a) She, the Respondent, had "problems" with SR in the past; and

(b) SR's interpretation of one of the issues on review was "ridiculous".

23. On 2 October 2009, the Deputy Chief Adjudicator, KD, who reviewed SR's decision, issued a decision upholding SR's fee ruling. In her reasons, KD expressed concern about the nature and tone of the language the Respondent used in her submissions. She found that the Respondent had failed discharge her duty to treat the tribunal with "candour, fairness, courtesy and respect". She also concluded that the Respondent's characterization of SR's analysis as "ridiculous" was "inconsistent with the proper tone of professional communication from a lawyer and unnecessarily rude and provocative".

24. The Respondent admits that she made the comments and that her conduct towards SR amounted to professional misconduct.

## **CONDUCT RELATING TO ML**

25. The Respondent represented ML while she was an associate at a firm called Heather Sadler Jenkins, while she was at Collier, and when she had her own practice.

26. On 15 May 2007, the Respondent and ML signed a contingency fee agreement authorizing the Respondent to pursue claims under the Top-Up and CEP processes.

27. In September 2008, Canada awarded ML a CEP payment in the amount of \$31,000. In accordance with their contingency agreement, the Respondent did not charge ML fees.

28. In or around January 2009, Canada awarded ML a Top-Up in the amount of \$9,775, which included the 15% contingency fee paid by Canada.

### **SLC Loan to ML**

29. On or around 25 June 2007 the Respondent arranged for ML to obtain a loan from Settlement Lenders Canada ("SLC") in the amount of \$10,000.

30. In support of ML's loan application, the Respondent prepared and provided to SLC documents claiming to secure ML's loan (and related fees and interest) by assigning to SLC \$12,500 of the proceeds of a motor vehicle accident claim the Respondent claimed to be negotiating for ML.

31. The documents the Respondent provided to SLC included an Irrevocable Assignment of Proceeds and Acknowledgment. The Irrevocable Assignment of Proceeds purported to assign \$12,500 from the proceeds of ML's motor vehicle accident claim to SLC as security for the loan, fees and interest. The

Acknowledgment, signed by the Respondent and dated 25 June 2007, confirmed that ML had agreed to the assignment, that the Respondent had verified ML's signature on the Assignment of Proceeds and that the Respondent agreed to forward the loan repayment to SLC upon receipt of the motor vehicle accident award before distributing money to her client.

32. ML did not have a claim arising out of a motor vehicle accident and the Respondent was not negotiating any such claim on her behalf.

33. On or around 26 June 2007, in reliance on the documents the Respondent sent it, which it believed to be valid, SLC loaned ML \$10,000. ML then loaned the money to the Respondent.

34. The Respondent did not advise ML to get independent legal advice before ML loaned her the money.

35. The Respondent repaid the loan, fees, and interest to SLC on 9 January 2008.

36. The Respondent admits:

(a) She borrowed \$10,000 from ML who was her client, without advising ML to get independent legal advice, contrary to Chapter 7, Rule 4 of the *Professional Conduct Handbook*.

(b) She signed the Acknowledgment and forwarded the Irrevocable Assignment and Acknowledgment to TLC knowing that ML did not have a motor vehicle accident claim and that she was not negotiating any such claim on ML's behalf. She further admits that she did so in order to mislead SLC and help ML obtain a loan, and that she did so intending to borrow the money from ML, contrary to Chapter 4, Rule 4 of the *Professional Conduct Handbook*.

(c) Her conduct set out in paragraphs 36 (a) and (b) amounts to professional misconduct.

#### **TMG Loan to ML**

37. On or around 25 June 2007, the Respondent forwarded an invoice to another third party lender, TMG The Mortgage Group Canada ("TMG"), which she had purportedly issued to ML in the amount of \$10,000.05, for services rendered in ML's Indian Residential School claims.

38. The Respondent was not entitled to issue this invoice under the terms of her contingency agreement with ML. She was only entitled to issue an invoice to ML if and when ML received her IAP award from Canada. ML had not received any such award when the Respondent issued the invoice. Furthermore, the Respondent had not incurred the fees and expenses set out in the invoice.

39. On or around 27 June 2007, TMG loaned ML \$10,000.50, on the understanding that it would be used to pay the Respondent's invoice, which it believed to be legitimate.

40. On June 27 June 2007, ML loaned the \$10,000.50 to the Respondent, who deposited it in her account at a Credit Union.

41. On or around June 29, 2007, the Respondent forwarded the following paperwork to TMG in further support of this loan:

(a) A Promissory Note in the name of ML promising to repay to TMG the \$10,000.05 loan, plus fees and interest for a total of \$12,000.

(b) An Irrevocable Assignment of Proceeds in the name of ML, pursuant to which ML assigned to TMG \$12,000 from the proceeds of a Indian Residential School award that the Respondent was negotiating for ML and directing the Respondent to forward payment in that amount directly to TMG upon receipt of the settlement funds, before paying any settlement funds to ML.

(c) An Acknowledgement in which the Respondent confirmed receipt of the client's acknowledgment and verified her signature.

42. The Respondent repaid the loan, fees and interest to TMG on or about 3 August 2007 from her general account.

43. The Respondent admits the following:

(a) She issued the invoice and sent it to TMG when she knew that she was not entitled to issue any interim invoice under the contingency agreement and that she had not incurred the fees and disbursements reflected in that invoice, contrary to Rule 4 of the *Professional Conduct Handbook*.

(b) She created and sent the false invoice to TMG to help ML obtain a loan, contrary to Rule 4 of the *Professional Conduct Handbook*.

(c) She borrowed \$10,000.50 from ML, at a time when she was ML's lawyer, without advising her to get independent legal advice, contrary to Chapter 7, Rule 4 of the *Professional Conduct Handbook*.

(d) Her conduct set out above in paragraphs 43 (a) through (c) amounts to professional misconduct.

#### **CONDUCT TOWARDS SS**

44. The Respondent also represented BJ in respect to BJ's IRSRC claim against Canada. Prior to retaining the Respondent as her lawyer, BJ had used the services of the lawyer SS.

45. On 3 February 2009, the Respondent wrote to SS informing her that she, the Respondent, would be acting for BJ and enclosing an authorization for SS to transfer BJ's file to the Respondent.

46. On 28 April 2009, SS sent BJ's file to the Respondent, along with a copy of SS's account, on the understanding that the Respondent would be bound by a number of undertakings, including an undertaking to pay SS's disbursements within seven (7) days of the receipt of the file.

47. The Respondent took the position that she was not required to pay SS's disbursements and would not comply with the undertaking but kept the file. She failed to pay the disbursements within the seven days required in the undertaking or immediately return the file to SS, contrary to Chapter 11, Rule 11 of the *Professional Conduct Handbook*.

48. The Respondent did not return the file to SS until after SS sent a letter to the Law Society on or around 16 June 2009.

49. The Respondent admits that she breached Chapter 11, Rule 11 of the *Professional Conduct Handbook* by failing to either pay the disbursements or return the file, and that her conduct amounted to unprofessional conduct.

50. As a result of these admissions the Respondent undertakes as follows:

(a) The Respondent undertakes not to apply for reinstatement to the Law Society for a period of five years, commencing June 6, 2011;

(b) During that period she has further undertaken not to apply for membership in any other law society without first advising the Law Society, nor permit her name to appear on the letterhead of any firm, or work in any capacity for any lawyer or law firm in BC; and

(c) in the event the Respondent applies for reinstatement, she has undertaken to provide to the Credentials Committee a medical report prepared by a qualified medical examiner.

