2011 LSBC 16
Report issued: June 29, 2011
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The Law Society of British Columbia
In the matter of the *Legal Profession Act*, SBC 1998, c.9
and a hearing concerning

Leonard Thomas Denovan Hill

Respondent

Decision of the Hearing Panel on Disciplinary Action

Hearing date: June 2, 2011
Panel: Bruce LeRose, QC, Chair, Leon Getz, QC, Benjamin Meisner

Counsel for the Law Society: Maureen Boyd
Appearing on his own behalf: Leonard Thomas Denovan Hill

introduction and Background

[1] In a decision issued March 3, 2011 (2011 LSBC 08) we found that the Respondent had committed a breach of an undertaking and that his doing so constituted professional misconduct. Following this, a further hearing was held on June 2, 2011 to consider what disciplinary action should be taken by the Law Society in respect of the Respondent's misconduct. At that hearing, we received submissions from Ms. Boyd on behalf of the Law Society and from Mr. Hill on his own behalf.

[2] At the conclusion of the hearing on June 2, 2011 we decided that:

(a) The Respondent must be suspended from the practice of law for 30 days;

(b) The period of suspension will commence on August 1, 2011; and

(c) The Respondent must, on or before April 30, 2012, pay the Law Society $4,000 by way of reimbursement of costs it incurred in connection with these proceedings.

We advised the parties of our decision and said that our reasons would follow. These are those reasons.

[3] It is neither our function nor our purpose to punish anyone. The primary object of proceedings such as these is to discharge the Law Society's statutory obligation, set out in section 3 of the *Legal Profession Act*, to uphold and protect the public interest in the administration of justice. Our task is to decide upon a sanction or sanctions that, in our opinion, is best calculated to protect the public, maintain high professional standards and preserve public confidence in the legal profession.

[4] These considerations are among those contemplated in the leading decision on sanctioning, *Law Society of BC v. Ogilvie*, [1999] LSBC 17. In that case the panel set out a list of a number of factors that might be relevant to the choice of a sanction. The list does not purport to be exhaustive, nor will all the factors identified be relevant in every case. We consider below the factors that are relevant here.

[5] The choice of sanction in this case is affected not only by the breach of undertaking itself but also by the circumstances that surrounded it. In our decision of March 3, 2011 we recounted those circumstances in some detail. It is unnecessary to repeat the details here. The undertakings imposed upon the Respondent were clearly set out in a letter from another lawyer accompanying a trust cheque payable to him in trust; they were more or less commonplace and virtually standard in transactions of the kind to which they related, and the Respondent was fully familiar with their general nature and incidence by virtue of long experience with such matters. He paid the funds out in October 2009 within a day of receiving them, including to himself in payment of fees. So far as the evidence goes, he did so without making any enquiries as to the terms upon which they had been delivered to him and whether those terms had been satisfied. In fact, he did not satisfy them for almost three months.

[6] There is more. First, the Respondent was dilatory and indeed somewhat evasive in responding to enquiries from the other lawyer about the status of matters. It was not until Monday, January 18, 2010 that the Respondent finally revealed, in response to insistent enquiries made of him on January 15 as to whether he still held the funds, that they had been paid out some three months earlier.

[7] Secondly, in 2007 the Respondent agreed that some two years earlier, in a matter unrelated to this, he had committed a breach of undertaking and that his breach constituted professional misconduct. He was fined $2,500. It is discouraging, to put it at its lowest, that the lesson of that incident seems to have been so quickly forgotten. This fact, too, is an aggravating consideration in the present case.

[8] Cumulatively, and without attempting to assign individual weight to them, the considerations that we have referred to indicate that the Respondent's transgression should be considered more egregious than, had they been absent, might otherwise have been the case.

[9] The authorities suggest that, where a breach of undertaking is unaccompanied by any aggravating considerations, panels have generally imposed fines, and these have generally been in the range of $2,500 to $5,000. See, for example, *Law Society of BC v. Richardson*, 2008 LSBC 05; and see *Law Society of BC v. Promislow*, 2009 LSBC 4, where the panel, at paragraph 23, provides a succinct summary of earlier decisions. Where there are such aggravating factors, however, such as accompanying incivility, evidence of a recidivist pattern of misconduct or an otherwise significant professional conduct record, panels have tended to resort either to somewhat heavier fines (e.g. *Law Society of BC v. Clendenning*, 2007 LSBC 10 - $7,500; *Promislow*, (supra), $10,000) or a suspension, as in *Law Society of BC v. Ghag*, [1999] LSBC 32 (one month), *Law Society of BC v. Goddard*, 2006 12 (two months) and *Law Society of BC v. Hordal*, 2004 LSBC 36 (six months).

[10] It is generally and appropriately considered that, as it was put in Hordal, (supra), a suspension is "significantly more severe ... than is the imposition of a fine" (at paragraph [55]). Unfortunately, however, there is no bright line that indicates conclusively which form of sanction is appropriate in a given case; and the previously decided cases are not particularly helpful in this connection except as suggesting ranges of response.

[11] In reaching our conclusion that a 30-day suspension should be imposed on the Respondent, we have not been indifferent to the likelihood that, as a sole practitioner, the consequences to him are virtually certain to be more serious than the alternative of a fine.

[12] Two sets of considerations led us to the conclusion that we reached.

[13] First we were influenced by the specific considerations described in paragraphs [5] to [7] above. They suggested to us that there is a need for a sharper reminder to the Respondent about the importance of meticulous compliance with undertakings.

[14] Secondly, we were influenced by a more general consideration. The jurisprudence is replete with references to the “fundamental importance” of compliance with undertakings. The leading exposition of this view is to be found in the following passage from the reasons of a hearing panel in *Law Society of BC v. Heringa*, [2003] LSBC 10, which was cited with approval by the Court of Appeal in 2004 BCCA 97, at paragraph 10:

> [37] Undertakings are not a matter of convenience to be fulfilled when the time or circumstances suit the person providing the undertaking; on the contrary, undertakings are the most solemn of promises provided by one lawyer to another and must be accorded the most urgent and diligent attention possible in all of the circumstances.
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> [38] The trust and confidence vested in lawyer's undertakings will be eroded in circumstances where a cavalier approach to the fulfillment of undertaking obligations is permitted to endure. Reliance on undertakings is fundamental to the practice of law and it follows that serious and diligent efforts to meet all undertakings will be an essential ingredient in maintaining the public credibility and trust in lawyers.

[15] In light of the importance of reliance on undertakings to the practice of law and the aggravating circumstances of this case, we think that there is a risk that a fine – even at the higher end of the scale – might reasonably be construed by a disinterested observer as a mere cost of doing business. That would undermine the principle of the *Heringa* decision.

[16] It is for these reasons that we concluded that the appropriate disciplinary action is a 30 day suspension. It is for much the same reasons that we rejected what we understood to be the Respondent’s contention that his suspension should commence at a date that caused the least disruption to his practice and his employees, rather than the normal rule that the commencement date should be the beginning of the month following that in which these reasons are delivered. In the ordinary course of events that would be July 1. We do not think these are proper considerations. Any other view would effectively deprive the suspension of its intended effect. We were advised, however, that the Respondent has trial commitments early in July and that it would be prejudicial to the clients to whom he is committed if they were forced at such short notice to find replacement counsel. This is clearly a proper consideration.

[17] We accordingly decided that the period of suspension should commence on August 1, 2011.

[18] We ordered that, as requested by the Law Society, the Respondent must reimburse it for its costs, including disbursements and counsel time (at a significantly discounted rate), in the amount of $4,000. We are satisfied that this is appropriate. The Respondent must pay this amount in full by April 30, 2012.