

2012 LSBC 15

Report issued: May 04, 2012

Oral Reasons: February 6, 2012

Citation issued: June 2, 2011

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

Wallace Moon Wong

Respondent

Decision of the Hearing Panel on Facts, Determination and Disciplinary Action

Hearing date: February 6, 2012

Panel: Thelma O'Grady, Chair, Glenys Blackadder, John M. Hogg, QC

Counsel for the Law Society: Carolyn Gulabsingh

Counsel for the Respondent: Henry Wood, QC

facts/reasons for findings

[1] On June 2, 2011 a citation was issued setting out a single allegation that the Respondent's conduct amounted to professional misconduct.

[2] The Panel has no difficulty finding that the Respondent's conduct amounts to professional misconduct as the Respondent admitted the facts that proved the allegation set out in the citation and admitted the conduct constitutes professional misconduct.

[3] Mr. Wong acted for a client in divorce proceedings and was assisted by an articling student (who in the course of the retainer was called and became an associate lawyer).

[4] During the course of the retainer the client went to Taiwan; however Mr. Wong had to prepare an affidavit and Financial Statement on behalf of the client in the course of the divorce action.

[5] Mr. Wong chose a novel way of having the client's affidavit completed. Mr. Wong instructed his associate to prepare what he called a "take-out affidavit". The Financial Statement in Form F8 is a sworn document that is required to be completed by both parties in a divorce action. Following Mr. Wong's instructions, the associate purported to take the client's oath by signing as a commissioner for taking affidavits for British Columbia in the jurat portion of the document.

[6] The problem that arose was with the mechanics of a "take-out affidavit". The client signed the sworn or jurat part of the Financial Statement document before the whole document was finalized or completely filled out and at a time when the client was not physically present before the lawyer (specifically contrary to Appendix 1, Rule 1 of the *Professional Conduct Handbook*). The client or deponent then sent the signed jurat page to the associate who administered the oath to the client over the telephone, including confirming that the information was correct. Apparently the information set out in the Financial Statement was correct. It is just that the document was completed in pieces, separated in time and place and without the deponent or

client ever being physically present before the lawyer as required. The Agreed Statement of Facts indicates that there had been other occasions when Mr. Wong took this approach to affidavits. That is corroborated by the fact that he had a special name for the procedure.

[7] In summary, before the Financial Statement was prepared or completed on the instructions of Mr. Wong, the associate sent the client the document with the jurat or the part to be sworn blank, and once the Financial Statement was filled out or completed, the associate administered the oath over the phone. The client then sent the signature page back to Mr. Wong's associate where the jurat was completed with the date of swearing being the day the associate administered the oath over the phone. The "sworn" or signature page was then inserted into the completed Financial Statement. The facts in the Financial Statement were always correct, but the jurat and body of the Financial Statement were done separately. Most importantly, the client was never physically present before the lawyer to allow the lawyer to see the client personally sign and to be able to properly satisfy the requirements of swearing an affidavit.

[8] Appendix 1, Rule 1(a) of the *Professional Conduct Handbook* specifically says a lawyer must not swear an affidavit or take a solemn declaration unless the deponent "is physically present before the lawyer". In a letter dated September 15, 2010 written by Mr. Wong, Mr. Wong replied to a lawyer retained to investigate this matter:

"I was not aware of the requirement contained in Appendix 1, Rule 1 of the *Professional Conduct Handbook* ..."

Mr. Wong went on to state that he did consider it proper for the associate "to complete the jurat of an affidavit when the well-known deponent had not signed the affidavit in her actual physical presence, but had sworn it was true over the phone".

[9] It is not surprising then that the Respondent has admitted the facts that prove the allegations in the citation and has admitted that his conduct constitutes professional misconduct.

[10] Having determined or found the facts set out herein, the determination of the Panel is that the Respondent has committed professional misconduct.

Disciplinary Action

[11] Having agreed on the facts and determination, the parties were invited to and did make submissions as to disciplinary action (they were already prepared do so).

[12] The Law Society submitted there should be a fine of \$3,500 plus costs of \$3,000 payable by April 30, 2012.

[13] The Panel finds the conduct of the Respondent serious and a clear breach of his professional responsibility and provisions of the *Professional Conduct Handbook* including Appendix 1, Rule 1.

[14] On the other hand, the Panel considers that the Respondent has admitted the facts and agreed to the determination. The Respondent is a man 60 years of age with very little professional conduct record (one Conduct Review for conduct unrelated). We are told no harm was suffered by any person as a result of the conduct of the Respondent. The facts and figures set out in the financial statement were apparently accurate in every respect, even though the client's oath was taken in a wholly inappropriate manner. The Respondent gained nothing from this conduct. The Respondent admitted the facts and that the facts constituted professional misconduct at an early date apparently, so no lengthy discipline proceedings were required. The Panel was told that this conduct had occurred before, but was not prevalent.

[15] Counsel for the Respondent also made a submission on disciplinary action and costs. In summary, the submission was that, while the Respondent at this stage did not disagree with the fine or the order as to costs, it was suggested by counsel for the Respondent that it was open to the Panel to perhaps impose lesser amounts.

[16] In all the circumstances the Panel found a fine of \$3,500 and costs against the Respondent of \$3,000, both payable by April 30, 2012, to be appropriate. The Respondent was given the result orally at the end of the proceeding on the basis that a decision on facts, determination and disciplinary action would follow. We find the fine and costs suggested by Law Society counsel to be appropriate in this case, particularly since this form of misconduct was not a one-time occurrence for this Respondent. However, balanced against this were all the other factors mentioned in paragraph [14] (above) in this decision.

[17] The Respondent is ordered to pay the following on or before April 30, 2012:

- (a) a fine of \$3,500;
- (b) costs in the amount of \$3,000.