

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

LEANNE FRANCES RUTLEY

Respondent

**Decision of the Hearing Panel
on Facts and Determination**

Hearing date: March 11, 2013

Panel: David Renwick, QC, Chair, Dan Goodleaf, Public representative, Sandra Weafer, Lawyer

Counsel for the Law Society: Jaia Rai

Counsel for the Respondent: Henry Wood, QC

BACKGROUND

[1] In 2005 the Respondent acted on behalf of MB and PB and prepared powers of attorney for the then married couple. MB was a business acquaintance and friend of the Respondent. Later, in 2010, after MB and PB had separated, the Respondent acted for MB by assisting her to use the power of attorney to transfer shares in a private company from PB to MB. The Respondent also prepared and registered a Form A transfer by which PB's interest in the matrimonial home was transferred to MB, through the use of the power of attorney.

[2] There is much that is agreed upon between the Respondent and the Law Society at this facts and determination stage of the hearing. The parties agree that the Respondent acted in a conflict of interest by facilitating MB's use of the power of attorney. They further agree that this constitutes professional misconduct, contrary to Chapter 6, Rule 7 of the *Professional Conduct Handbook* then in force.

[3] However, they disagree on whether this conduct was dishonourable or questionable conduct. At the close of the hearing, the Panel sought submissions on whether, because of the wording of the citation, the Panel was precluded from considering whether her conduct fell within the rest of Chapter 2, Rule 1 of the *Professional Conduct Handbook*, in that her conduct cast doubt on her professional integrity or competence, or reflected adversely on the integrity of the legal profession or the administration of justice.

[4] The citation alleges:

1. In or about September 2010, you assisted your client, MB, in her use of a power of attorney, which you had prepared on behalf of her spouse and your former client, PB, to transfer PB's shares in B Inc. to her when you knew that they were separated, and in doing so you:

(a) engaged in dishonourable or questionable conduct contrary to Chapter 2, Rule 1 of the *Professional Conduct Handbook*, or

(b) acted in a conflict of interest contrary to Chapter 6, Rule 7 of the *Professional Conduct Handbook*.

This conduct constitutes professional misconduct, pursuant to section 38(4) of the *Legal Profession Act*.

2. In or about September 2010, you prepared a Form A Transfer on behalf of your client, MB, and subsequently registered it in the Land Title Office, by which the interest of her spouse and your former client, PB, in real property jointly owned by them was transferred to MB through the use of a power of attorney prepared by you and given by PB to MB prior to their separation, and in doing so you:

(a) engaged in dishonourable or questionable conduct contrary to Chapter 2, Rule 1 of the *Professional Conduct Handbook*, or

(b) acted in a conflict of interest contrary to Chapter 6, Rule 7 of the *Professional Conduct Handbook*.

This conduct constitutes professional misconduct, pursuant to section 38(4) of the *Legal Profession Act*.

[5] For the reasons that follow, the Panel finds that we are not limited from considering whether her conduct was “dishonourable or questionable,” and that her conduct was contrary to Chapter 2, Rule 1 of the *Handbook*, and constitutes professional misconduct.

AGREED FACTS

[6] An Agreed Statement of Facts was filed at the hearing. The relevant facts are summarized below.

1. Ms. Rutley was called to the BC Bar in February, 1990. She has practised as a solicitor, primarily in the areas of corporate commercial, real estate and wills and estates practice, in the Kelowna and Vernon areas from 2002.

2. Shortly after Ms. Rutley moved to Kelowna she met MB. MB was a bank manager and later a financial advisor. Ms. Rutley and MB have a professional and personal relationship. At that time MB was unmarried and owned the home that later became the matrimonial home when MB married PB in 2004.

3. In 2005 MB and PB retained Ms. Rutley to provide legal services, including the preparation of wills and powers of attorney.

4. In April 2006, while he and MB were married, PB purchased 15,000 shares of a privately held company, B Inc., for \$4,500. In May, 2007, in connection with a refinancing of MB’s home, MB transferred title in the matrimonial home to herself and PB as joint tenants. Ms. Rutley did not provide legal services to either MB or PB in connection with either the share purchase or the transfer of the home.

5. PB declared bankruptcy in February 2009. MB and PB separated in June 2009. The separation was acrimonious. MB was represented by counsel (not Ms. Rutley) throughout the relevant period in connection with her matrimonial dispute.

6. In connection with the matrimonial proceedings, MB’s counsel wrote to PB, who was then self-represented, asking that PB transfer title of the matrimonial home to MB. PB refused. Ms. Rutley was not aware of these communications.

7. In August 2010 MB tried to use the power of attorney to transfer the shares of B Inc. from PB’s name into her name. The transfer agent told MB in a letter that the power of attorney had to be “renotarized”.

8. Ms. Rutley wrote a letter to the share transfer agent on behalf of MB. The letter enclosed a notarized copy of the power of attorney, as well as an explanation that the power of attorney remained valid and

in full force and effect until such time as PB revoked it in writing. MB provided a copy of Ms. Rutley's letter to the transfer agent, who then transferred the shares to MB. The transfer occurred on October 7, 2010.

9. In September 2010 Ms. Rutley also prepared documentation to transfer PB's interest in the matrimonial home to MB, again, using the power of attorney. MB then executed these transfer documents before another lawyer. The transfer of the matrimonial home concluded on September 29, 2010. The mortgage on the property, on which both PB and MB were liable, remained on title.

10. Ms. Rutley did not notify PB of either the share or the property transfer.

11. In October 2010 PB complained to the Law Society concerning the transfer of the shares. During the course of the Law Society's investigation of the complaint into the share transfer, Ms. Rutley disclosed, through her counsel, that the power of attorney was also used to effect the property transfer.

12. A citation was issued on July 27, 2012. Ms. Rutley admits that she should have refused to act for MB in connection with the share transfer and the property transfer. She admits that using the power of attorney to facilitate the share transfer and the property transfer was improper.

THE RESPONDENT'S MOTIVATION

[7] This is not a situation in which the Respondent acted out of self-interest or profited from her use of the power of attorney (apart from her professional fees in connection with the property transfer). As stated, the Respondent acknowledges that her conduct was improper. However, the Respondent has explained that she was influenced by her relationship with MB and that she allowed her personal feelings and personal relationship with MB to affect her professional judgment.

[8] In particular, MB revealed to the Respondent details of her relationship with PB that caused the Respondent to have sympathy for MB. MB told the Respondent that MB had been the actual purchaser and beneficial owner of the B Inc. shares, but that they had been put into PB's name "for tax reasons." She disclosed that, after the separation, PB had broken into their home and was caught stealing items. MB was afraid that PB would sell or assign the shares at some point. MB further disclosed that the relationship with PB had been violent, that she was frightened of him and that she did not want to have any direct dealings with him. Further, the Respondent was influenced by the fact that the power of attorney contained a clause granting the specific power to use it to transfer the assets of PB to MB.

[9] More importantly, because of her knowledge of MB and her circumstances, the Respondent felt confident that what she was doing was actually assisting to preserve assets. The Respondent accepted that MB's motivation was to prevent inappropriate disposition of the assets by PB. From her knowledge of MB, the Respondent considered that MB was rooted in the community and was not planning to sell the house or leave the community. In that case, the house and the shares would be available for reallocation at the time of resolution of the matrimonial litigation if necessary. The Respondent encouraged MB to deal with her matrimonial litigation and resolve issues surrounding division of assets.

[10] The Respondent's belief in the state of the relationship between MB and PB is relevant only to explain her motivation. It is not necessary for this Panel to make any determinations as to whether MB's allegations against PB were in fact true. The actual facts of the relationship between MB and PB are irrelevant for the purpose of this matter. What is relevant is what the Respondent believed about the relationship between MB and PB and how that belief motivated her use or facilitation of the use of the power of attorney.

ISSUES FOR DETERMINATION

[11] The citation contains two allegations with respect to each of the share transfer and the property transfer. As stated at the outset, the Respondent admits the second allegation that she acted in a conflict of interest, and that this constitutes professional misconduct. What this Panel is left to determine is whether the Respondent “engaged in dishonourable or questionable conduct contrary to Chapter 2, Rule 1 of the *Professional Conduct Handbook*,” as alleged in the citation, paragraphs 1(a) and 2(a).

[12] Chapter 2, Rule 1 of the Handbook sets out:

A lawyer must not, in private life, extra-professional activities or professional practice, engage in dishonourable or questionable conduct that casts doubt on the lawyer’s professional integrity or competence or reflects adversely on the integrity of the legal profession or the administration of justice.

[13] Counsel for the Respondent argued that, due to the abbreviated wording of the citation, this Panel could only consider whether the Respondent engaged in dishonourable or questionable conduct, and could not consider whether the Respondent’s conduct cast doubt on her professional integrity or competence or reflected adversely on the integrity on the legal profession or the administration of justice.

[14] The issues for the Panel are therefore twofold. Firstly, whether this Panel is precluded from considering whether the Respondent’s conduct casts doubt on her professional integrity or competence or reflects adversely on the integrity of the legal profession or the administration of justice. Secondly, only if we find that we are so precluded, whether the Respondent’s conduct falls within the remaining portions of Rule 1 that were specified in the citation i.e. whether her conduct in this instance is “dishonourable” or “questionable”.

[15] The citation that was issued against the Respondent did not simply allege that she had engaged in dishonourable or questionable conduct. The citation alleged that she had engaged in dishonourable or questionable conduct “contrary to Chapter 2, Rule 1.” Therefore, the additional words of Chapter 2, Rule 1 are incorporated into the citation by reference.

[16] As counsel for the Law Society stated in supplementary submissions, hearing panels are not bound by the technical rules involved in the drafting of a criminal information or indictment. The purpose of the citation is to ensure that the respondent lawyer has knowledge of the case she has to meet. In this case, the Respondent had knowledge of what conduct was in issue and of the specific provisions that her conduct was alleged to violate. At no time did the Respondent ask for particulars of the specific portions of Chapter 2, Rule 1 that she was alleged to have violated. As James Casey states in *The Regulation of Professions in Canada*, p. 8-16, “If a charge is defective in that it does not contain sufficient information to enable the member to properly prepare a defence, then the remedy is to ask for particulars.”

[17] In the Panel’s view, the Respondent’s conduct is properly characterized as violating Chapter 2, Rule 1. Her conduct in facilitating MB’s improper use of the power of attorney reflects adversely on the integrity of the legal profession. It is a marked departure from the conduct expected of lawyers both in that she violated her duty of loyalty to PB, who had been her client, and also because she facilitated MB’s improper use of the power of attorney. The Respondent’s intentions and explanations for her conduct may be a mitigating factor with respect to sanction, but they do not excuse the misconduct.

DETERMINATION

[18] The Panel accepts the Respondent’s admission of professional misconduct for acting in a conflict of interest contrary to Chapter 6, Rule 7. The Panel also finds that the Respondent’s conduct in facilitating the

use of the power of attorney was questionable conduct that reflects adversely on the integrity of the legal profession and constitutes professional misconduct.

CONFIDENTIALITY

[19] After the hearing of this matter, counsel for the Respondent filed an application seeking an order that evidence or submissions referring to matters of solicitor-client privilege or confidentiality not be disclosed, pursuant to Rule 5-6(2)(a) of the Law Society Rules. The Law Society consents to the application on the basis of the Law Society's statutory obligation to protect and maintain privilege and confidentiality.

[20] Therefore, this Panel makes an order that evidence or submissions referring to matters of solicitor-client privilege or confidentiality not be disclosed, and that, if any such references are reproduced in transcript form at any time, they must be redacted before allowing public inspection.