

2013 LSBC 28

Report issued: September 25, 2013

Citation issued: May 11, 2007

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

## **VIVIAN CHIANG**

Respondent

### **Decision of the Hearing Panel on Disciplinary Action**

Hearing date: August 29, 2013

Panel: Thelma O'Grady, Chair, Ralston S. Alexander, QC, Karl F. Warner, QC

Counsel for the Law Society: Henry Wood, QC

Appearing on her own behalf: Vivian Chiang

## **Background**

[1] On June 17, 2009, a majority of the Hearing Panel dismissed all counts of a citation issued May 11, 2007. A dissenting member of the Panel found professional misconduct made out in respect of one of the four allegations in the citation, allegation 2. The Law Society advanced an application to the Benchers for a Review, and in that Review, the decision of the majority of the Panel was reversed and a finding of professional misconduct in respect of allegation 2 of the citation was made.

[2] On an appeal from the decision of the Benchers on Review to the Court of Appeal, the decision of the Benchers and the finding of professional misconduct were confirmed. Leave to appeal to the Supreme Court of Canada was denied.

[3] The finding of professional misconduct was made in respect of an appearance by the Respondent in the British Columbia Supreme Court on an application where the Respondent was representing a company in which the Respondent was a principal and had a significant personal financial interest. The dissenting decision, the Benchers on Review and the Court of Appeal determined that the Respondent had intentionally misled the Court by seeking from that Court on short leave, relief that was beyond the relief permitted by the order made allowing the application on short leave.

[4] The circumstances of the application are comprehensively detailed in the decision of this Panel on Facts and Verdict.

[5] The Law Society requested a suspension from practice of one month and a contribution to costs of \$10,000 against a proposed bill of costs of \$16,613, with time to pay.

[6] The Respondent requested a "discontinuance of further prosecution of this complaint," a ban on publication of the result and removal of practice restrictions provided by the Respondent in an undertaking

from her at an early stage in this proceeding.

## **DISCUSSION**

[7] It is for the Panel to determine the appropriate discipline to be imposed in the circumstances of this citation, and to that end the Panel has reviewed the factual circumstances of the determination in light of the helpful guidance provided by the reasoning of the Law Society discipline decision referred to as “ *Ogilvie*” and reported as *Law Society of BC v. Ogilvie*, [1999] LSBC 17.

[8] The primary mandate of the Law Society is to protect the public interest in the administration of justice. The authority to discipline members for professional misconduct is an adjunct of that mandate and is particularly engaged when the demonstrated misconduct has a direct impact upon the public interest in court proceedings. Our deliberations were assisted by helpful submissions on the *Ogilvie* considerations from counsel for the Law Society.

### **Nature and Gravity of the Conduct Proven**

[9] The obligation to be forthright and honourable to the Court in the course of a presentation is a core value of our profession. There can be no flexibility in this determination as the Court must be able to rely upon counsel to provide reliable information in all respects of the matters before the Court. It is in this respect that the fundamental gravamen of this citation is founded. The Respondent failed in her obligation to present an honest statement of the basis for her presence in the Court and the Court was misled in the result.

[10] The misconduct thus demonstrated is at a very high level of significance given the importance of integrity and honour required of members in the discharge of their duties, and particularly in the discharge of their duties to the Court.

### **Age and Experience of the Respondent**

[11] This *Ogilvie* factor will have greater significance where the alleged misconduct has a characteristic dependent upon an error in judgment in a practice decision. In the circumstances of this citation however, the integrity issues raised by the behaviour are not dependent upon a lack of age or experience, but speak instead to a more fundamental shortcoming.

### **Previous Character**

[12] The Respondent has had a previous discipline encounter with the Law Society in the nature of a Conduct Review. The conduct described in that review does not provide any insight into the character of the Respondent.

### **Advantage to be Gained by the Respondent**

[13] The entire matter of the advantage to be gained by the Respondent is at the centre of this citation. It has now been conclusively determined that the misconduct for which the Respondent has been found responsible was motivated by her desire to protect a wasting inventory of fruit product. The Respondent sought to protect her financial stake in the outcome of the litigation, and in that process disregarded clear directions from the Court about the limits of her ability to seek redress.

[14] It was the Respondent’s stated and repeated preoccupation with the financial consequences of the subject dispute that, at the end of the day, persuaded the various tribunals before which she appeared that

she was acting wilfully and knowingly contrary to instructions provided and acknowledged.

### **Acknowledgement of the Misconduct/The Possibility of Remediation and Rehabilitation/and the Need for Specific Deterrence**

[15] Counsel for the Law Society usefully combined these three *Ogilvie* considerations together for examination as one. We agree with that approach because they represent the most troubling aspect of this entire discipline proceeding.

[16] The regrettable reality of this combined array of considerations is that the Respondent has demonstrated no acknowledgement of misconduct and, in her presentation at the disciplinary action hearing, sought again, as she did in the Court of Appeal, to re-open the findings of fact and to re-argue their import. Rather than acknowledge any wrongdoing, the Respondent engaged in a vitriolic attack on the motives and behaviour of the Law Society. The attacks included suggestions that the Law Society was in the thrall of the large Vancouver law firms and that the allegations were in part motivated by racial bias against the Respondent.

[17] The extent to which the Respondent has strayed beyond credible submissions as demonstrated above speaks at least to a serious judgmental deficiency in the Respondent. The Panel has sincere apprehensions that the Respondent's proximity to the dispute has destroyed any objectivity she might have in respect of it and is another regrettable aspect of this troubled history.

[18] Counsel for the Law Society suggests that the Respondent has confused "prosecution" with "persecution", and the Panel agrees with that characterization. We add that it is indeed a most regrettable aspect of the matter, and despite the Respondent's refusal to acknowledge her misbehaviour, it is hoped that the Respondent will at least see this outcome as providing the opportunity "to put this all behind her," an outcome she requested as part of her submission to the Panel on discipline action.

[19] The Respondent's inability to acknowledge professional misconduct following the confirmation of that finding by the Benchers on Review and the Court of Appeal has been a matter of concern to the Panel. Her continued insistence (even at the disciplinary action hearing) that the impugned behaviour was merely a miscommunication suggests to the Panel that the seriousness of the misconduct has still not been recognized by the Respondent.

### **The Need to Ensure the Public's Confidence in the Integrity of the Profession**

[20] The Respondent argued repeatedly that no member of the public had a complaint against her and that no one had been harmed by her behaviour. Both comments are untrue, which must be explained. The Respondent errs by separating the complainants (lawyers for responding litigants) from their clients. There can be no doubt that the clients were negatively impacted by the misbehaviour of the Respondent. They were faced with additional unjustified costs and were involved in a litigation that was protracted, at least in part, by the misleading behaviour of the Respondent.

[21] The fact that it was the two lawyers that advanced the initial complaint does not relieve their clients from the impact of the misleading behaviour. This distinction appears to be one that the Respondent does not understand.

[22] It is also clear that the public's confidence in the integrity of the profession will necessarily be impaired by any reasoned review of the facts of this case. These things are not supposed to happen when members of the legal profession are directing the conduct of the litigation.

## **Impact of the Proposed Sanction upon the Respondent**

[23] In responses to questions from the Panel at the disciplinary action hearing, the Respondent appeared not to be actively engaged in the practice of law. She advised that she was doing “consulting” work on a part-time, often pro bono, basis. It is the view of the Panel that the Respondent would not be extraordinarily impacted by a suspension of her entitlement to practise law. The Panel did consider that some of the Respondent’s descriptions of her “consulting” work might well be the practice of law. An example of our concern in this regard is the incorporation of companies, a behavior described by the Respondent as a component of her “consulting” practice”.

[24] The extent to which the Respondent is in the active practice of law in a conventional manner is not clear. We are of the view that the Respondent’s consulting practice would likely be impaired in some ways by a suspension.

## **Range of Sanctions Imposed in Prior Discipline Decisions for Similar Conduct**

[25] Reported decisions indicate a substantial consistency of consequence from circumstances where the finding of professional misconduct is the result of misleading the Court. The usual consequence is suspension from the entitlement to practise law for a period of time.

[26] We are satisfied that that is an appropriate penalty in this case, and any inclination to relieve against this determination withers in the face of the steadfast refusal of the Respondent to accept responsibility for her conduct.

[27] The reported cases suggest that the penalty for misleading behaviour can be a fine or a period of suspension in the range from 30 to 90 days. The cases in which a fine was imposed are generally found to be situations where there is an explanation for the behaviour that suggests an absence of intent or a result from a mistake or misunderstanding. The longer periods of suspension were provided in those instances where there was particularly egregious misbehaviour or repeat instances of misleading behaviour.

## **REFERENCES**

[28] The Respondent submitted three letters of reference to the Panel in support of her submission. The letters of reference were considered by the Panel in its deliberations on the appropriate discipline outcome.

[29] Following the completion of the hearing, but before the Panel had issued its decision, the Respondent requested an opportunity to submit further letters of reference that she had received after the discipline hearing concluded. Counsel for the Law Society had no objection to the Panel’s suggestion that further letters of reference would be accepted and that advice was provided to the Respondent. Two additional letters were received and reviewed by the Panel.

[30] None of the reference letters mentioned Ms. Chiang’s current discipline matter with the Law Society of British Columbia.

## **DISCIPLINE**

[31] We are of the view that the circumstances of this case require that a period of suspension of one month be imposed, and we so order. The Respondent did not offer any explanation for the conduct that would allow a lesser penalty to be imposed. As indicated earlier, it is the view of the Panel that the Respondent has yet to develop an appreciation for the extent to which she has misconducted herself, despite a strong message to that effect from the highest court in this Province.

[32] We order that the Respondent's entitlement to practise law be suspended for the month of November, 2013.

## **COSTS**

[33] The Law Society submitted a bill of costs in the amount of \$16,613 but requested that the Panel order costs in the amount of only \$10,000. The reduction in requested costs was the result of the mixed outcome from the initial hearing in which several of the allegations in the citation were not made out.

[34] The Law Society requested that the costs be payable by December 31, 2013. The Panel has determined that there is sufficient evidence before it to conclude that the Respondent does not have a robust private practice. It believes that a hardship on the Respondent would result from an order for payment of costs by the end of the year, particularly in light of the suspension order.

[35] Accordingly, the Panel orders that the Respondent make a contribution to the costs of the Law Society in the amount of \$10,000 and that that amount be paid on or before August 31, 2014.

[36] Given that the Panel has ordered a suspension, there is no jurisdiction to grant the publication ban requested by the Respondent. That application is dismissed as moot.

[37] The Respondent requested a removal of the restrictions on her practice. The undertaking given by the Respondent in respect of practice conditions by its terms is spent with the release of this decision. The restrictions imposed on the practice of the Respondent are accordingly removed.

[38] The balance of the relief requested by the Respondent, namely that all further prosecution of this complaint be discontinued, is dismissed as being inconsistent with the statutory duty imposed on this Panel by the provisions of the *Legal Profession Act*.