

2013 LSBC 32

Decision issued: November 27, 2013

Citation issued: July 27, 2013

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 Disciplinary Action**

Hearing date: October 10, 2013

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

Counsel for the Law Society: Alison Kirby

Counsel for the Respondent: Henry Wood, QC

introduction and BACKGROUND

[1] In a decision issued June 24, 2013 we accepted the Respondent's admission of professional misconduct for acting in conflict of interest. We also found that her conduct in facilitating the use of a power of attorney constituted professional misconduct. The relevant facts are set out in the earlier decision, *Law Society of BC v. Rutley*, 2013 LSBC 16.

[2] On October 10, 2013 we held a hearing to determine the appropriate disciplinary action. This is our decision.

[3] It is well established that the relevant factors to take into account in disciplinary dispositions are those set out in *Law Society of BC v. Ogilvie*, 1999 LSBC 17 at par. 10. While there is no need to repeat them all here, the Panel considers the following to be of most importance in this case:

- (a) the nature of the misconduct and the need to ensure the public's confidence in the integrity of the profession; and
- (b) the range of penalties imposed for similar misconduct.

The nature of the misconduct/Public confidence in the profession

[4] As the relevant facts are set out in the earlier decision, they will not be repeated here. Although this is not a case where the Respondent acted out of self-interest or with malfeasance, the conduct is such that it is worthy of significant sanction. Acting against a former client goes against the fundamental duty of loyalty that is part of the core of trust in a solicitor-client relationship. As the Law Society stated in its submissions, "The legal profession and the administration of justice could not function properly without the trust that society places in lawyers. Dishonourable or questionable conduct by a lawyer undermines that trust, not only in that lawyer but in the entire profession." Although there are some mitigating factors in this case, namely the lack of a previous discipline record, her co-operation with the Law Society investigation and her

admission of the facts that underlie the misconduct, these do not outweigh the need to maintain public confidence in the integrity of the profession by sending a message that these sorts of breaches will not be tolerated.

The range of penalties for similar misconduct

[5] No two cases are alike, and this necessarily limits the utility of precedents on disciplinary action. However, a review of the cases shows a range of penalties for cases where parallels can be drawn. In this case both parties were agreed that this is not a case where a suspension would be appropriate. The Law Society sought a fine of \$10,000. The Respondent sought a fine of \$5,000.

[6] The Panel has reviewed the decisions brought forward by both parties. Two cases concerning the improper use of a power of attorney were cited by the Law Society: *Law Society of BC v. Persad*, [1998] LSDD No. 132 and *Law Society of BC v. Begin*, [1993] LSDD No. 192. These cases are both from the 1990s. The fines were \$5,000 and \$9,000. Although the cases are dated, they provide some guidance as to an appropriate range of penalty.

[7] More recent cases, although not dealing with powers of attorney, also demonstrate a range of sanction. On the high end of the range is *Law Society of BC v. Culos*, 2013 LSBC 19. This was a case where the lawyer admitted professional misconduct in two separate client matters and was fined \$15,000. He acted for a creditor against a client and, in so doing, used information he had gained in the initial client file against the client on whose behalf he had received it. In a completely separate matter, he assisted a client to create a trust that removed assets from an estate where another client was the beneficiary of the estate. In *Culos*, there were two completely separate incidents as opposed to the two very much related incidents in this case. In addition, in that case, the “Professional Conduct Record displays a sporadic but continuing lack of judgment.” Those factors are not present in this case.

[8] In *Law Society of BC v. Vlug*, 2012 LSBC 03, a fine of \$5,000 (considered by the panel to be a “significant fine”) was imposed for questionable conduct where the lawyer failed to make the necessary inquiry into an amount he received from ICBC for a settlement that was \$10,948 more than agreed on. Notwithstanding that Mr. Vlug had had three previous Conduct Reviews, a fine in the amount of \$5,000 was imposed. In that case, however, there was not the added element of breach of the duty of loyalty that is present in this case.

[9] Counsel for the Respondent brought forward the case of *Law Society of BC v. O’Neil*, 2013 LSBC 23. Although that was a conflict of interest case where the penalty imposed was \$5,000, the panel was influenced by the fact that the range of penalties proposed (\$2,000- 5,000) was agreed to by both parties. There was no such agreement on the range of penalties in this case. Further, O’Neil was not a case where the conduct was found to have violated Chapter 2, Rule 1 of the *Professional Conduct Handbook*.

CONCLUSION AND ORDER

[10] In this case we have one citation alleging two separate but related incidents, both arising out of the improper use of a power of attorney against a former client. Although there was no sharp practice and the Respondent has no previous discipline record, we believe this matter to be worthy of a significant fine due to the nature and severity of the breach. The duty of loyalty is at the core of the solicitor-client relationship. It is the function of this Panel to impose a fine that recognizes that importance and maintains the confidence of the public that the Law Society will treat such matters seriously. Accordingly, a fine of \$7,500 is imposed.

COSTS

[11] The Law Society has put forward a Bill of Costs totalling \$9,572. The Bill of Costs includes items for a full day of hearing at the facts and determination stage, as well as two sets of written submissions. The Panel is mindful of the fact that the hearing took longer than perhaps otherwise necessary, and required written submissions because we asked for argument and submissions on the sufficiency of the wording of the citation. As this was solely at the Panel's request, we do not feel it appropriate that the Respondent be penalized in costs for those additional items. As such, we believe that the amount of costs should be reduced to reflect this. In all the circumstances we conclude that an amount of \$7,400 for costs and disbursements is appropriate.

[12] Counsel for the Respondent has asked for one year to pay. We are in agreement and order that the Respondent pay the fine of \$7,500 and costs and disbursements in the amount of \$7,400 in four equal instalments every four months, beginning December 1, 2013.