

2014 : No. 03 Fall

Thomas Paul Harding

Surrey, BC

Called to the bar: August 31, 1990

## Citation issued June 18, 2013

**Discipline hearing** : April 29 to May 1, 2014

**Panel** : Cameron Ward, Chair, Dennis Day and Brian J. Wallace, QC

**Decision issued** : June 27, 2014 (2014 LSBC 29)

**Counsel** : Robin McFee, QC for the Law Society; Gerald Cuttler for Thomas Paul Harding

## Facts

In June 2012, Harding agreed to assist his mother-in-law with a possible claim arising from a motor vehicle accident. Her vehicle was rendered inoperable and had been towed to a secure compound at a towing facility.

Harding went to the towing facility to take pictures of the damage to his mother-in-law's vehicle before it could be moved or altered. He was concerned that liability for the accident might be an issue, making the nature of the damage important.

Harding spoke to an employee of the towing facility through the small opening in a window that separates the public from the staff. He was advised that he could not take pictures and that only the registered owner was legally allowed to go into the yard.

Harding argued that he was the registered owner's lawyer and could go into the yard. After consulting a colleague, the employee advised Harding that he would need written permission from the owner to go look at her car.

Harding reluctantly left and went to his mother-in-law's residence to obtain a handwritten letter of authorization. He returned to the towing facility 45 minutes later.

An employee came to the window and advised that she would call her manager. Harding held the handwritten letter against the glass and said that if he didn't have an answer in less than 10 minutes he was going to call the police.

While waiting for the employee to return, Harding took photographs of the reception area and personnel through the window. Another employee told him that it was illegal to take pictures, but he continued to do so.

Harding then left the office and went to the parking area where he phoned the RCMP. He said that he needed "someone there to talk to these idiots because otherwise you'll have to send a police officer probably to arrest me because I'm going to go get a crowbar and smash up the place."

While the RCMP dispatcher was on the line, Harding moved his car in front of the gate to block access to the secure storage area and waited for the police to arrive.

As there were several security cameras at the towing facility, much of what transpired during Harding's visit

was recorded.

## Determination

The panel had to determine whether, in the context of seeking to preserve evidence for a client, Harding violated the prohibition against dishonourable or questionable conduct that reflects badly on the integrity either of the lawyer or of the profession and, if so, whether the conduct is a marked departure from acceptable standards. The panel considered three issues: the crowbar comment, taking photographs and blocking the entrance to the storage area.

Harding's crowbar comment was made to an RCMP dispatcher to emphasize the volatility of the situation and to persuade her that police attendance was required. While the comment was apparently overheard by an employee, there was no evidence to suggest that Harding intended it to be taken as a threat.

Harding acknowledged making this remark in a moment of frustration, and he provided a written apology to the Law Society. The panel could not say that this statement, viewed in context of protecting a client's interest, represented a marked departure from the standard of conduct expected of lawyers.

The panel found that, in taking the photographs, Harding did not breach anyone's privacy. The towing facility is a public place under video surveillance.

While he was aggressive and rude, Harding claimed he had a duty to create a record to protect the interests of his client. The fact that the employees refused consent and that the towing facility asserted a policy prohibiting photographs does not make taking pictures a marked departure from the standard of conduct the Law Society expects of lawyers. The panel found that this act did not constitute professional misconduct.

Harding moved his car to block the entrance to the storage area to prevent the removal of his client's car. It was aggressive, but done out of the belief that it was necessary to protect his client's interest. The panel found that this action did not constitute professional misconduct.

## Decision

The panel dismissed the citation and the three allegations against Harding.

## Citation issued December 3, 2013

**Discipline hearing :** May 14, 2014

**Panel :** Nancy Merrill, Chair, Robert Smith and John Waddell, QC

**Decision issued :** July 7, 2014 (2014 LSBC 30)

**Counsel :** Kieron Grady for the Law Society and Gerald Cuttler for Thomas Paul Harding

## Facts

In January 2013, Thomas Paul Harding was retained by a client in a family law proceeding against her husband. The issues in the proceeding included spousal and child support. The husband had been jailed twice for failing to comply with court orders, prior to Harding being retained by the wife.

On August 1, Harding and both opposing co-counsel attended court regarding Harding's Notice of Application dated July 24 seeking relief against his client's husband, which included jail for non-compliance with earlier orders. Neither Harding's client nor her husband was present. The judge heard counsel on an earlier Notice of Application; however, due to a lack of time, the judge advised he would not hear the July 24 application on that date.

Harding and the two opposing lawyers discussed the case outside the courtroom. According to the complainant, Harding said words to the effect that his client's husband should be jailed and that he might learn his lesson after he's been gang raped.

On the afternoon of August 1, Harding sent an email to opposing counsel about the case and the need to schedule court dates. Co-counsel did not respond to his email.

On August 8, Harding was advised that both opposing co-counsel intended to withdraw as counsel for his client's husband.

On August 14, one of the opposing lawyers complained to the Law Society about Harding's alleged comment.

## Determination

There were two issues before the panel:

1. whether Harding made the alleged comment; and
2. if he did make the comment, did the comment constitute professional misconduct?

Harding was insistent that he did not make the comment.

At the time of the incident, the complainant had been a lawyer for less than two years and was 26 years of age. She had no previous dealings with Harding that would have resulted in animosity or bad feelings.

The complainant did not speak to her co-counsel about the alleged comment until a few days later when she was preparing her complaint. Her co-counsel advised that she had not heard the alleged comment. The panel found it odd that the complainant did not speak to her co-counsel about such an offensive comment immediately after they left the courthouse.

The complainant did not respond to Harding's email on August 1, either to advise that she and her co-counsel would be withdrawing from the case or to mention the alleged comment. By her silence, she missed an opportunity to confirm the alleged comment with Harding.

On April 11, 2014, Harding wrote a letter of apology to the complainant. The letter did not constitute an admission and was prepared in close proximity to the hearing. The panel had the impression that it was prepared for a strategic rather than a sincere purpose.

The panel concluded that it had not been established on a balance of probabilities that Harding made the alleged comment.

Given the panel's finding, it was not necessary to make a determination on whether the alleged comment constituted professional misconduct. However, the panel noted that, while the alleged comment was offensive and ill-advised, there were a number of factors that would have prevented it from crossing the line to professional misconduct.

The alleged comment was not passed on to the complainant's client, and there was no evidence that Harding's intention, or the complainant's interpretation of the alleged comment, was to persuade or intimidate the complainant into advising her client to comply with the court orders. Further, if the alleged comment was made, it was made only once, outside the hearing of third parties, and in understandably frustrating circumstances. The alleged comment was found to be closer to mere rudeness or discourtesy than professional misconduct.

The panel dismissed the allegation that Harding's actions constituted professional misconduct.