

2015 LSBC 28  
Decision issued: June 23, 2015  
Oral reasons: November 4, 2014  
Citation issued: May 29, 2013

**THE LAW SOCIETY OF BRITISH COLUMBIA**

**In the matter of the *Legal Profession Act*, SBC 1998, c. 9**

**and a hearing concerning**

**JENNIFER EILEEN MCCORMICK**

**RESPONDENT**

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**DECISION OF THE HEARING PANEL  
ON FACTS, DETERMINATION AND DISCIPLINARY ACTION**

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Hearing date: November 3 and 4, 2014

Panel: A. Cameron Ward, Chair  
John M. Hogg, QC, Lawyer  
June Preston, Public representative

Discipline Counsel: Susan M. Coristine  
Counsel for the Respondent: William MacLeod

**INTRODUCTION**

- [1] At the conclusion of the hearing in this matter we delivered our decision on facts, determination and disciplinary action and indicated that written reasons would follow. These are our reasons.
- [2] The Respondent is the subject of a citation alleging that she committed professional misconduct, pursuant to s. 38(4) of the *Legal Profession Act*, as follows:
1. On or about November 30, 2011, you gave an interview to CBC Television in which you disclosed confidential client information or made statements regarding disciplinary proceedings involving Sergeant RB when you had

acted as counsel for either or both of the RCMP and the Appropriate Officer of “E” Division, BB, in those proceedings and by doing so you did some or all of the following:

- (a) breached your duty of loyalty to your client, contrary to Chapter 6, Rule 1 of the *Professional Conduct Handbook* then in force;
- (b) disclosed confidential information without your client’s consent, contrary to Chapter 5, Rule 1 of the *Professional Conduct Handbook* then in force;
- (c) made public statements concerning the affairs of your client, before you were satisfied that the communication was in the best interests of your client and you had your client’s consent, contrary to Chapter 8, Rule 24 of the *Professional Conduct Handbook* then in force.

## **FACTS**

[3] The parties provided us with an Agreed Statement of Facts, which we have accepted. We find the relevant facts to be as set out below.

- (a) In 2001, the Respondent was a sole practitioner, practising mostly in the area of criminal law, family law, wills and estates and some conveyancing.
- (b) The *Royal Canadian Mounted Police Act*, RSC 1985, c. R-10, provides that, where a member has contravened the RCMP Code of Conduct, a hearing can be initiated by the “Appropriate Officer,” in this case the Deputy Commissioner.
- (c) The RCMP Deputy Commissioner, assisted by the Superintendent in charge of Administrative Services, commenced Code of Conduct hearings against an RCMP member, RB. The hearings concerned allegations of sexual harassment and assault against RB that had been made by female RCMP members who worked with him during undercover operations. These proceedings were ultimately dismissed.
- (d) Commencing in 2001, the RCMP retained the Respondent as outside counsel, in effect, to prosecute a second proceeding against RB, which involved complaints by two female RCMP members (“the complainants”). The Respondent, as counsel for the Deputy Commissioner, took instructions from her after consultation with the

Superintendent. The Respondent submitted her accounts to the Superintendent, and, in effect, was counsel for the RCMP as an organization.

- (e) The Respondent was in a solicitor/client relationship with the Deputy Commissioner as a representative of the RCMP and owed a duty of client confidentiality and loyalty to that person and the RCMP.
- (f) Counsel for the member, RB, approached the Respondent concerning a resolution of the second proceeding, and the Respondent sought instructions from the Deputy Commissioner. The following morning, December 11, 2001, the Superintendent flew in to Calgary, Alberta where the hearing was to take place, to help facilitate a resolution on behalf of the Deputy Commissioner. A tentative solution was reached, and the Respondent phoned the Deputy Commissioner for instructions and received such instructions to accept an agreed penalty for the member, RB, and forego a hearing. The Deputy Commissioner instructed the Respondent to accept the agreed penalty on behalf of the RCMP. The Respondent signed the Agreed Statement of Facts on behalf of the Deputy Commissioner, and the matter was concluded with RB receiving a forfeiture of one day's pay, a reprimand and a requirement to attend counselling. The Respondent reported to the RCMP and said the resolution addressed the best interests of RB, the complainant and the RCMP.
- (g) The complainants and two other female RCMP members were unhappy with the manner in which the complaints for sexual harassment and assault had been handled by the RCMP, including the proceedings against RB, so they commenced a lawsuit against the Government of Canada, RB, the Deputy Commissioner and the Superintendent ("the RCMP litigation"). In this litigation, they alleged sexual assault and harassment by RB with various other allegations against the Deputy Commissioner and the Superintendent of failing to act with due diligence, good faith and impartiality in respect to the proceedings against RB.
- (h) A decade later, one of the female RCMP officers, who was a litigant in the RCMP litigation and a complainant in the RB internal proceedings, contacted the Respondent to inform her that the CBC was interviewing people for the Fifth Estate program and wanted to talk to the

Respondent. The Respondent agreed to be interviewed by the CBC's Fifth Estate.

- (i) The Respondent agreed to the Fifth Estate interview because she wanted to lend credibility to the complainants, whom she had come to know as friends and for whom she felt that justice had not been done. Portions of her interview were used by the Fifth Estate program, which was broadcast on December 9 and 14, 2011 and remains accessible on the CBC website.
- (j) Two DVDs containing the Fifth Estate program are part of the Agreed Statement of Facts.
- (k) The Respondent was aware on the day of the interview for the CBC program that it would be critical of the RCMP handling of the complaints of the female RCMP officers.
- (l) In the Fifth Estate interview, the Respondent disclosed information concerning the RB Code of Conduct proceeding that she was going to conduct had it not been resolved by an agreed resolution. Specifically, the Respondent disclosed information she had obtained during the course of her retainer, including the assessment of the strength of the case, the process by which it was resolved and her view that the complainants had not been very well served by the resolution of the proceeding. The Respondent was critical of the manner in which the RCMP handled the RB proceeding.
- (m) The Respondent took legal advice prior to the Fifth Estate interview from the lawyer who was representing the female RCMP officers on their claim against the RCMP and others. This lawyer was also present during the interview of the Respondent by the Fifth Estate.
- (n) The Respondent admits that:
  - i) She did not review the *Professional Conduct Handbook* or turn her mind to the duty of loyalty or broader duty of confidentiality or otherwise consider her duties prior to giving the interview to the Fifth Estate beyond seeking legal advice from the lawyer that represented the two female RCMP officers in their civil litigation against the RCMP and others. She should have been familiar with her duties.

- ii) She did not specifically turn her mind to Chapter 8, Rule 24 of the *Professional Conduct Handbook*, although in the interview she made comments based, in part, on information she obtained during her retainer. Portions of the transcript of her interview show the Respondent making statements that were disloyal to the RCMP and the Deputy Commissioner. She breached her duty of loyalty to her client, contrary to Chapter 6, Rule 1 of the *Professional Conduct Handbook*, then in force. Her conduct constituted professional misconduct, pursuant to s. 38(4) of the *Legal Profession Act*. She did not turn her mind to Chapter 5, Rule 1 of the *Professional Conduct Handbook* and her broader duty of confidentiality. She disclosed confidential client information that she obtained during the course of her retainer.
- iii) Portions of the transcript of the Fifth Estate interview contain confidential client information that she disclosed during the interview without the consent of her client.
- iv) She disclosed confidential information without her client's consent, contrary to Chapter 5, Rule 1 of the *Professional Conduct Handbook* then in force. Her conduct constituted professional misconduct pursuant to s. 38(4) of the *Legal Profession Act*.
- v) The Deputy Commissioner, on behalf of the RCMP, complained to the Law Society of British Columbia and was interviewed by the Law Society. The Deputy Commissioner, on behalf of the RCMP, indicated they were shocked by the Respondent's participation in the Fifth Estate program and the comments she made, which they considered unfair, misleading and a breach of confidentiality and harmful to themselves and the RCMP.

[4] In summary, the Respondent was retained on or about November 15, 2001 on a private retainer by the RCMP to prosecute a Code of Conduct discipline hearing against a male RCMP officer in relation to complaints by two female RCMP members of sexual harassment and assault. On the morning that the hearing was set to commence in Calgary, Alberta, a Superintendent of the RCMP, on behalf of the Deputy Commissioner, flew in to Calgary and was the main catalyst in bringing about a resolution of the matter before the hearing commenced. The Deputy Commissioner instructed the Respondent to settle the matter on the basis of the tentative agreement that had been reached.

[5] Without being exhaustive, the following are some of the public comments that were made by the Respondent in her interview by the Fifth Estate:

- (a) The women were “credible”;
- (b) The Respondent was “stunned” and angry that the Superintendent had arrived at the hearing. The Superintendent was there to get it resolved, and the women were unhappy as they wanted a hearing;
- (c) The Respondent’s role was “as a prosecutor” with a burden to prove the case against the member;
- (d) The female RCMP complainants were not well served; they were angry and did not have a lot of confidence in their employer;
- (e) The Respondent felt the story of the female RCMP complainants was credible “absolutely”;
- (f) In relation to the type of complaints made by these female RCMP officers, “people don’t make those kind of complaints” (in other words, there would therefore be merit to the complaints);
- (g) She felt she had a strong case;
- (h) She was “taken aback” by the resolution that had been reached or proposed by the Superintendent, but it was her job to take instructions;
- (i) On day one or before the hearing started “she had no clue there was a deal”;
- (j) The Superintendent was “not my client.” The Respondent felt “undermined”; she did not know what the Superintendent was doing there (at the misconduct hearing);
- (k) The Respondent was “floored” as she did not need his presence; she could call him if he was needed in terms of some resolution;
- (l) The Respondent talked to the two complainants or female RCMP officers involved and “they were exceptionally unhappy, wanted to be heard and were ready to go. They were not prepared to have a resolution forced on them”;
- (m) “Their employer let them down badly” (meaning the RCMP in relation to the two female RCMP complainants);

- (n) The Respondent's impression was the hearing panel was not pleased with the resolution of the matter that was put to them or was agreed upon;
- (o) In relation to the Superintendent showing up at the start of the hearing, the Respondent was "not happy to see him there, stunned and she played a lesser role as the day went on as the Superintendent took over";
- (p) The Respondent's "personal view" was that the whole process needed to change (the process of complaints by RCMP members about the conduct of others).

[6] The comments of the Respondent set out immediately above are examples of the many comments made by the Respondent in the course of the CBC interview.

## **DETERMINATION**

[7] Notwithstanding the Respondent's admissions, the Law Society bears the burden of proving its allegations of professional misconduct on a balance of probabilities based on evidence that is clear, convincing and cogent: *Law Society of BC v. Liggett*, 2009 LSBC 21.

[8] The test for professional misconduct is whether the respondent's conduct constitutes a marked departure from the standard of conduct the Law Society expects of lawyers: *Law Society of BC v. Vlug*, 2014 LSBC 9; *Law Society of BC v. Martin*, 2005 LSBC 16; *Re: Lawyer 12*, 2011 LSBC 11.

[9] Chapter 5, Rule 1 of the *Professional Conduct Handbook* provides as follows:

A lawyer shall hold in strict confidence all information concerning the business and affairs of the client acquired in the course of the professional relationship, regardless of the nature or source of the information or of the fact that others may share the knowledge, and shall not divulge any such information unless disclosure is expressly or impliedly authorized by the client, or is required by law or by court.

[10] Chapter 6, Rule 1 of the *Professional Conduct Handbook* provides as follows:

As a general principle, a lawyer has a duty to give undivided loyalty to every client.

[11] Chapter 8, Rule 24 of the *Professional Conduct Handbook* provides as follows:

Before making a public statement concerning the client's affairs, a lawyer must be satisfied that any communication is in the best interests of the client and made with the client's consent.

- [12] We find the Respondent's admission that she breached each of these Rules to be supported by the evidence.
- [13] Counsel for the Respondent admitted that the Respondent agreed with the conclusion of counsel for the Law Society that the Respondent breached her duties and made public statements concerning the affairs of her client and that such conduct amounted to professional misconduct as alleged in the citation. The Panel finds that the facts contained in the Agreed Statement of Facts (Exhibit 5) show a marked departure from the standard of conduct that the Law Society expects from lawyers and therefore constitutes professional misconduct.

### **DISCIPLINARY ACTION**

- [14] Counsel for the Law Society urged the Panel to consider the objects and duty of the Law Society, as set out in s. 3 of the *Legal Profession Act*, to uphold and protect the public interest in the administration of justice by various means, including "(b) ensuring the independence, integrity, honour and competence of lawyers."
- [15] Counsel also urged upon the Panel that it needed to follow the factors relevant to disciplinary action that are laid out in *Law Society of BC v. Ogilvie*, [1999] LSBC 17. The *Ogilvie* case looked to the criminal sentencing process to provide some helpful guidelines on penalty. While the Panel is not dealing with the criminal sentencing in this case, it is generally accepted the guidelines set out in *Ogilvie* is a checklist appropriate to consider on matters of disciplinary action. The only problem with the *Ogilvie* factors is that the checklist is lengthy, running from (a) to (m) and, of course, in many cases it is not necessary to go through the entire checklist to arrive at a just result on disciplinary action.
- [16] The submission of the Law Society included reference to nine different prior cases on disciplinary action of the Law Society of British Columbia and comments on eight of the relevant items set out in the *Ogilvie* guidelines. The Law Society's position was that the range of penalty was one to four months with a two to three month suspension probably being appropriate.
- [17] Additionally, the Law Society asked for an order of costs and presented a draft Costs of Hearing totalling \$16,225.85.

- [18] The Respondent did not take issue with the recommended authorities and statutory provisions put forward by the Law Society for assessing the appropriate disciplinary action as set out in *Lessing and Ogilvie*.
- [19] The Respondent's submissions started by pointing out the chronic problem in dealing with penalty where it is hard to find a previous decision with the exact same facts. In the Panel's view, that is precisely why prior decisions are simply used to set the range and occasionally there will be a prior decision, with facts so similar, a panel is persuaded to follow it.
- [20] The Respondent made the argument that a fine would be more onerous on the Respondent than a suspension; however, the Panel views a suspension as more severe than a fine (*Law Society of BC v. Culos*, 2013 LSBC 19, para. 15).
- [21] The written submission of the Respondent, like the Law Society, also went through the various *Ogilvie* factors.
- [22] The Respondent also points to a series of mitigating factors, including the fact that the Respondent's actions were motivated by a desire to right an injustice in the prosecution of RCMP discipline cases arising from sexual assaults upon fellow members of the RCMP. Also, we accept that the Respondent was not motivated by any dishonest or self-serving purpose such as greed, personal aggrandizement or personal malice. Rather, she believed that she was acting in the best interests of the complainants and the public in making the statements she did.
- [23] We note that the Respondent was also named as one of three defendants in an action brought by the Superintendent involved in this case by a Notice of Claim filed November 29, 2013, claiming damages for defamation.
- [24] The Respondent was admitted to the Law Society of British Columbia on February 6, 1990. She has an otherwise unblemished disciplinary record and submitted several letters of reference attesting to her good character.
- [25] The Respondent submitted that a suspension would be more appropriate than a fine, given her personal circumstances, and she sought a suspension of no more than one month, with a reduction in costs.
- [26] On the issue of the Respondent's ability to pay a fine (which is always a relevant consideration on the issue of a fine or costs), the Respondent's taxable income for the preceding six years was fairly modest.

- [27] The Panel is satisfied this complaint and citation has been a long and stressful matter for the Respondent. She apparently is still involved in civil litigation involving this matter, the defamation claim mentioned earlier in these reasons.
- [28] On the other hand, the Respondent admits, and the Panel finds, that the Respondent's conduct amounted to a clear breach of the rules of the *Professional Conduct Handbook* as alleged in the citation.
- [29] There is an issue here with respect to public confidence as well as the expectations of clients when they retain a lawyer. It is important that lawyers realize:
- (a) Clients expect that a lawyer will hold in confidence all information concerning the business and affairs of the client and not divulge such information improperly. This is enshrined in Chapter 5, Rule 1 under the heading of "Duty of Confidentiality".
  - (b) Further, the lawyer's duty to give undivided loyalty to every client is a matter that has general and specific application. The public expects it, and clients are entitled to such treatment. This ethical conduct is mandated by Chapter 6, Rule 1 of the *Professional Conduct Handbook*. Undivided loyalty by a lawyer to a client is a necessary ingredient for an adversary system to function properly.
  - (c) Lawyers have been practising for a long time in a society where media coverage has been searching and pervasive. Media coverage of all kinds can embarrass or harm clients. Lawyers should know this and conduct themselves accordingly. Except in the most general terms, other than dealing with matters the media could learn on their own by attending Court or clarifying procedural matters, lawyers must recognize it is often not appropriate to make public statements concerning a client's affairs and that any specific statement made must be with the client's consent. This is mandated by Chapter 8, Rule 24 of the *Professional Conduct Handbook*.
  - (d) In this case, the interview by the Fifth Estate program of the CBC involved many instances of the Respondent making public statements concerning the client's affairs (para. 14 above). As the evidence disclosed, all of this was done without the consent of the client. The client has said the public comment was not in the best interests of the client in this case. Lawyers should be cautious on this issue. This Respondent went far beyond what was permissible, and it certainly was not in the best interests of the client.

- [30] The Respondent was well intentioned when she championed the interests of the complainants in airing their grievances with the RCMP's disciplinary process. However, in doing so, she lost sight of the fact that she had been retained by the RCMP, not the women who had been aggrieved. Her breaches of the professional obligations of loyalty, confidentiality and caution in speaking publicly were serious and warrant a serious disciplinary response.
- [31] Following the proper admission by the Respondent that the breaches of the *Professional Conduct Handbook* amounted to professional misconduct, both the Respondent and the Law Society gave written and oral argument on the disciplinary action proposed by each party. After an adjournment for deliberations on the issue of disciplinary action, the Panel returned and advised the parties that there would be an order of a 45-day suspension from December 1, 2014 to January 15, 2015, inclusive. Further, there was an order of costs against the Respondent in the total amount of \$5,000. Written reasons were to follow.
- [32] The Panel confirms the order it made on November 4, 2014 as follows:
- (a) The Respondent be subject to a 45 day suspension, to be served December 1, 2014 to January 15, 2015; and
  - (b) The Respondent pay the costs of the hearing, limited to the total amount of \$5,000, with one month to pay.