2015 LSBC 36
Decision issued: July 20, 2015
Citation issued: December 12, 2014

THE LAW SOCIETY OF BRITISH COLUMBIA

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

and a hearing concerning

LAURA ELIZABETH HOLLAND

RESPONDENT

DECISION OF THE HEARING PANEL

Hearing date:	May 5, 2015
Panel:	Lee Ongman, Chair June Preston, Public representative Sandra Weafer, Lawyer
Discipline Counsel:	Carolyn Gulabsingh
Counsel for the Respondent:	David Donohoe

INTRODUCTION

[1] This matter comes before us by way of Rule 4-22. Rule 4-22 provides for a conditional admission of a discipline violation and a consent to a specified disciplinary action. On December 4, 2014 a citation was authorized by the Discipline Committee. That citation alleges two counts of professional misconduct – firstly the breach of a trust condition imposed in connection with a real estate transaction and, secondly, the failure to adequately supervise the conveyancer handling that same transaction.

[2] By letter dated March 18, 2015, Ms. Holland admitted that she professionally misconducted herself as set out in the citation. She further consented to a specified disciplinary action pursuant to Rule 4-22. The specified disciplinary action was a fine in the amount of $4,000 and costs of $1,000, all payable by October 31, 2015.

On April 9, 2015 the Discipline Committee recommended the acceptance of Ms. Holland's proposal. The Panel heard this matter on May 5, 2015, and for the reasons that follow, we accept the admission of professional misconduct on both allegations in the citation, the fine of $4,000 and costs of $1,000 plus disbursements.

FACTS

[3] This matter arises out of a residential conveyance in the midst of a matrimonial dispute. The husband wished to sell a residence in British Columbia. The wife had registered a certificate of pending litigation (the "CPL") against title of the house. Ms. Holland's firm acted for the husband on the conveyance, but was not acting for him on the matrimonial action. In order for the sale to proceed, the lawyers in the matrimonial action agreed that the CPL would be released on the condition that the proceeds from the sale of the property would be held in trust pending resolution of the family law litigation between the husband and the wife. The sale was to complete on May 3, 2013.

[4] Ms. Holland's firm was retained to act for the husband on the residential conveyance. She was the lawyer who supervised all residential conveyancing matters at the firm. It was not uncommon for her firm to deal with over 100 conveyances in a month.

[5] On April 24, 2013 the wife's lawyer wrote to the paralegal at Ms. Holland's firm who was dealing with the conveyance. He enclosed an executed cancellation of charge to release the CPL. The executed Form 17 was sent on the following trust conditions or undertakings:

(a) not to make application for registration of the CPL except concurrently with the registration of the transfer of the property; and

(b) that the net sale proceeds of sale of the property after payment of usual selling costs, adjustments and amount required to clear title be paid in trust to the wife's lawyer.

[6] On May 1, 2013 Ms. Holland's paralegal emailed the husband the documents that required his signature. These documents were emailed to him as he resided in Alberta at the time of the conveyance. The husband executed the documents before a notary in Alberta and returned them to Ms. Holland's firm on May 2, 2013.

[7] On May 3, 2013 the paralegal from Ms. Holland's firm emailed the wife's lawyer asking her to release the CPL and provide a filed copy.

[8] The purchaser's notary then filed the Form A transfer at the Land Title Office and the trust cheque with the net purchase proceeds of sale were sent to the husband. The firm trust cheque to the husband was signed by two other lawyers at the firm. It was not signed by Ms. Holland.

[9] Five months later, in December 2013, the wife's matrimonial lawyer wrote to the paralegal at Ms. Holland's firm inquiring as to the whereabouts of the purchase funds pursuant to the undertaking. As that paralegal had left the firm, the letter was forwarded to Ms. Holland. Until that time she had not been aware of the undertaking, let alone that it had been breached.

[10] Ms. Holland immediately reported the breach to the Law Society. She also contacted the husband to seek return of the proceeds. Although he initially refused to return the net sale proceeds, by early 2014 he returned approximately $155,000 to the wife's lawyer, which was enough to satisfy the wife's claims.

[11] In addition to Ms. Holland's self-reporting of the breach, the wife's lawyer also reported the breach of undertaking to the Law Society.

[12] At all times, Ms. Holland has co-operated fully with the Law Society's investigation, culminating in this proposed disciplinary action. In addition, Ms. Holland and her firm have taken steps to strengthen controls in their office with respect to conveyancing to avoid the potential of this type of matter recurring.

ROLE OF A HEARING PANEL IN RULE 4-22

[13] Rule 4-22 of the Law Society Rules allows for a conditional admission and a consent to a specific disciplinary action. The role of the hearing panel is to be satisfied the admission is appropriate and that the disciplinary action is acceptable – or, in other words, whether the proposed disciplinary action is within a fair and reasonable range in all the circumstances. As stated in *Law Society of BC v. Rai*, 2011 LSBC 2 at paragraph 7:

> The Panel thus has a limited role. The question the Panel has to ask itself is, not whether it would have imposed exactly the same disciplinary action, but rather, "Is the proposed disciplinary action within the range of a fair and reasonable disciplinary action?"

APPROPRIATENESS OF THE PROPOSED PENALTY

[14] In this Panel's view, the admission of professional misconduct is appropriate, and the penalty falls within an appropriate range.

[15] Having regard to the factors set out in *Law Society of BC v. Ogilvie*, [1999] LSBC 17, this Panel finds the proposed disciplinary action appropriate. Of significance to this Panel are:

(a) Ms. Holland has been practising law for 20 years. She has no professional conduct record. She took steps to rectify this situation as soon as she learned of it – by convincing the husband to return sufficient monies to meet the wife's claims and by reporting the breach to the Law Society. As set out above, Ms. Holland has been proactive and co-operative at all stages of the Law Society investigation. She has tightened controls on conveyancing procedures in her office to ensure that all undertakings are brought to the attention of the responsible lawyer, and also to ensure that all undertakings are further reviewed before any monies are paid out of trust.

(b) This matter involved a breach of undertaking and was therefore very serious. Although the Panel finds that there is no need for specific deterrence in this case (Ms. Holland has clearly realized the impact of what occurred in this case and has taken steps to ensure no future breaches), there remains the need for general deterrence in order to ensure the continued confidence of the profession, of clients, and of the public as a whole in transactions that are based upon undertakings.

(c) The penalty proposed in this case is within the range of sanctions in prior cases. The cases cited before us showed a range of penalties between a $2,000 fine in a 2002 Rule 4-22 disposition (*Law Society of BC v. Lee*, [2002] LSBC 29) to a fine of $7,500 in a matter which included a failure to respond to the opposing party concerning the discharge in issue, where the individual had a prior conduct review regarding compliance with undertakings (*Law Society of BC v. Clendening,* 2007 LSBC 10). Perhaps the most similar case is *Law Society of BC v. Dhindsa*, 2014 LSBC 18. That case, like this one, involved both a citation for breaching undertakings, and a citation for failing to adequately supervise staff. Like this case, it proceeded by way of Rule 4 -22, and a fine of $5,000 was imposed. The salient difference in this case, which leads to a lesser fine being appropriate, is that in *Dhindsa* there was a previous conduct record.

[16] Counsel for Ms. Holland in his submissions argued that, in fact, a lesser penalty than the $4,000 fine may have been appropriate. We do not have to deal with that submission because, at the end of the day, he agreed that the fine that was agreed to by the Law Society and Ms. Holland, and which was accepted by the Discipline Committee, was reasonable.

SEALING ORDER

[17] At the conclusion of the hearing in this matter, counsel for the Law Society made an oral application for a non-disclosure and sealing order pursuant to the Law Society Rules for the purpose of preventing third party access to solicitor-client confidential information. The application is to have certain exhibits redacted or anonymized before disclosure to members of the public. These exhibits consist of:

(a) Exhibit 1 - the citation issued December 12 , 2014;

(b) Exhibit 2 - the Agreed Statement of Facts; and

(c) Exhibit 5 – an excerpt of a transcript of an interview of Ms. Holland.

[18] Openness and transparency are necessary to build confidence in the disciplinary proceedings. Rule 5-6(1) provides that every hearing is open to the public, while Rule 5-7(2) permits any person to obtain a copy of an exhibit entered during a public portion of a hearing. However Rule 5-6 (2), read in conjunction with Rule 5-7(2), permits a panel to make an order that all or part of an exhibit filed at a public hearing may not be made available to third parties "to protect the interests of any person."

[19] It is important that clients not lose the protection of solicitor-client confidentiality simply because the Law Society has relied on documents containing confidential information for the legitimate purpose of bringing disciplinary proceedings against a lawyer or former lawyer. A panel can therefore rely on Rules 5-6(2) and 5-7(2) to seal materials filed at a hearing in order to prevent client confidences from being accessible to the decision on Disciplinary Action.

[20] The Law Society submits that a redacted and anonymized version of Exhibit 2 – Agreed Statement of Facts could be prepared and disclosed to the public without any client identifying information if an application to obtain a copy of the exhibit is made by a member of the public. The Law Society submits that parts of Exhibit 1 and parts of Exhibit 5 should be redacted or anonymized prior to disclosure to the public in order to remove client identifying information.

[21] The Panel finds that the submissions of counsel appropriately address the issues set out above, and therefore we order that all copies of Exhibit 1, Exhibit 2 and Exhibit 5 should be redacted for names of clients and that names be initialized for anonymity before disclosure to the public because these documents contain the names of clients, which generally constitute confidential information [*Code of Professional Conduct for British Columbia*, Rule 3.3-1 (5)(a)].

[22] In addition, all copies of the Agreed Statement of Facts filed as Exhibit 2 should be sealed after a redacted and anonymized version is prepared for the file, because this document makes extensive reference to client identities. The redacted and anonymized version of the Agreed Statement of Facts is the only version of the Agreed Statement of Facts that will be available to the public instead of Exhibit 2.

ORDER

[23] The Panel orders as follows:

(a) The Respondent must pay a fine of $ 4,000 by October 31 2015;

(b) The following materials filed by the Law Society in these proceedings must be redacted to protect client confidentiality by expunging clients' names, and anonymizing the identities:

(i) Exhibit 1- citation;

(ii) Exhibit 2 – the Agreed Statement of Facts; and

(iii) The excerpt of transcript;

(c) The Respondent must pay costs of these proceedings, fees and disbursements of $ 1,236.25 by October 31, 2015.