2016 LSBC 36
Decision issued: October 31, 2016
Citation issued: June 24, 2015

THE LAW SOCIETY OF BRITISH COLUMBIA

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

and a hearing concerning

CHARLES LOUIS ALBAS

RESPONDENT

DECISION OF THE HEARING PANEL
ON DISCIPLINARY ACTION AND COSTS

Hearing date:	October 4, 2016
Panel:	Martin Finch, QC, Chair Dan Goodleaf, Public representative Bruce LeRose, QC, Lawyer
Discipline Counsel:	Mark Bussanich
Appearing on his own behalf:	Charles Albas

INTRODUCTION

The citation

[1] In our decision issued May 30, 2016 the Hearing Panel found the Respondent had committed professional misconduct with respect to eight allegations. The Panel proceeded with the hearing on facts on determination in the absence of the Respondent. The Panel's decision on Facts and Determination can be found at 2016 LSBC 18 and therefore will not be repeated.

[2] The Panel's findings are summarized as follows:

(a) On two occasions, the Respondent borrowed money from his clients, contrary to Chapter 7, Rule 4 of the *Professional Conduct Handbook* (the "PCH");

(b) On two occasions, the Respondent provided legal services for clients when he had a direct or indirect financial interest in the subject matter of the legal service, contrary to Chapter 7, Rule 1 of the PCH;

(c) The Respondent failed to disclose material facts to the court;

(d) The Respondent failed to correct the record with respect to material facts that he later discovered;

(e) The Respondent misled other counsel; and

(f) The Respondent failed to report judgment debts to the Law Society.

POSITION OF THE PARTIES

The Law Society

[3] The Law Society submits that the appropriate disciplinary action in respect of the proven professional misconduct is a suspension in the range of two to four months, to commence immediately following the Hearing Panel's decision. The Law Society does not seek any conditions under s. 38 (5) or (7) of the *Legal Profession Act* (the "Act").

[4] The Law Society also seeks costs of $5,706.10. A copy of the proposed Bill of Costs prepared by the Law Society was entered as Exhibit 8 in these proceedings.

The Respondent

[5] Although the Respondent did not appear at the hearing on Facts and Determination, he did attend this hearing on penalty. The Respondent takes no issue with the Hearing Panel's decision on Facts and Determination. When pressed by the Panel, the Respondent took the position that a two-month suspension was appropriate and that there should be no order as to costs because of his personal bankruptcy and the impecunious state of his finances.

DISCUSSION

[6] The primary purpose of disciplinary proceedings is to meet the obligations of the Law Society as set out in section 3 of the Act. The essence of that obligation with respect to discipline is to protect the public interest, maintain high professional standards and preserve the public's confidence in the legal profession (MacKenzie, *Lawyers and Ethics: Professional Regulation and Discipline*, loose-leaf (Toronto: Carswell, 1993) at page 26-1).

[7] For many years discipline panels of the Law Society followed the factors set out in *Law Society of BC v. Ogilvie*, 1999 LSBC 17, in determining the appropriate disciplinary action to be taken. The factors reflected the objects and duties set out in section 3 of the Act.

[8] In a recent decision, *Law Society of BC v. Dent*, 2016 LSBC 05, the panel reviewed the *Ogilvie* factors and commented as follows:

> [15] The present *Ogilvie* factors are 13 in number. Many times hearing panels feel obligated to go through each and every *Ogilvie* factor. Many times these factors overlap with each other. In addition, depending on the case before the hearing panel, the hearing panel strains to find a rationale for each of the *Ogilvie* factors.
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> [16] It is time to provide some simplification to this process. It is not necessary for a hearing panel to go over each and every *Ogilvie* factor. Instead, all that is necessary for the hearing panel to do is to go over those factors that it considers relevant to or determinative of the final outcome of the disciplinary action (primary factors). This approach flows from *Lessing*, which talks about different factors having different weight.
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> [17] There is an obligation on counsel appearing before the hearing panel to point out to the panel those factors that are primary and those factors that play a secondary role. Secondary factors need to be mentioned in the reasons, if those secondary factors tip the scales one way or the other. However, in most cases, the panel will determine the appropriate disciplinary action on the basis of the primary factors without recourse to secondary factors.

[9] In this case the following *Ogilvie* factors play a primary role in determining the appropriate sanction:

(a) the nature and gravity of the misconduct;

(b) the age, experience and character of the respondent;

(c) the impact upon the victims;

(d) acknowledgement of the conduct and remedial action; and

(e) the range of sanctions imposed in similar cases.

Nature, gravity and consequences of the conduct

[10] The Respondent's professional misconduct is very serious. In particular, he knowingly acted for two clients in securing loans in which he had an exclusive personal interest.

[11] When these loans went into default his clients were compelled to hire different lawyers to enforce the security the Respondent had prepared himself and presumably charged for. Foreclosure proceedings against the Respondent were commenced, and in the context of these proceedings the Respondent not only misled the new counsel for the lenders about the status of a pending sale of the subject property, but also misled the court about the status of the potential buyer.

[12] To make matters worse, the lenders were not only clients of the Respondent but also friends and neighbours.

[13] The more serious the conduct, the greater the need for deterrence, both specific and general. Given the Respondent's status as a former member, specific deterrence may have less import. However, general deterrence remains a significant factor in imposing the appropriate sanction.

[14] The concerns underlying proven misconduct (borrowing from clients and acting for clients when having a financial interest) relate to acting in conflicts of interest. Taken alone, acting in a conflict of interest would likely warrant a suspension. Indeed, many prior cases in which lawyers acted for clients when having a financial interest have resulted in suspensions (see summaries of *Law Society of BC v. Dent*, 2001 LSBC 36, [2001] LSDD No. 39; *Law Society of BC v. Coglon*, 2006 LSBC 14; and *Law Society of BC v. Seifert*, 2009 LSBC 17. Moreover, by failing to correct the record in court and by misleading opposing counsel, the Respondent was dishonest. He also misled opposing counsel on at least five occasions. His conduct was intentional and repeated. Prior cases involving intentional misleading have resulted in suspensions (see, for example, the summary of *Law Society of BC v. Galambos*, 2007 LSBC 31).

Age, experience and character of the respondent

[15] The Respondent is 64 years of age and practised law for nearly 40 years. The Panel has no difficulty concluding that the Respondent was clearly capable of recognizing the conflict of interest in this matter. Instead, he chose to exercise what he described as bad judgment to benefit personally at the expense of his clients.

[16] The Law Society tendered the Respondent's Professional Conduct Record ("PCR"), which included a 1985 matter that was too old to offer any assistance. Included in the PCR is a citation authorized September 25, 2014 (the "2014 Citation") for preparing a will for a client and naming himself and his wife as beneficiaries. The conduct occurred between 2009 and 2013, after the conduct in the present case. The hearing panel accepted the Respondent's conditional admission and ordered a fine in the amount of $7,000 and costs in the amount of $1,736.25.

[17] Although the matter referred to in paragraph [16] occurred after the transgressions that are the subject matter of this citation, it certainly demonstrates the Respondent's propensity to ignore conflicts of interest in situations where he could personally benefit.

The impact upon the victims

[18] This is undoubtedly one of the most egregious *Ogilvie* factors in this case. The two clients who loaned money to the Respondent have lost significant sums of money. The Respondent has made an Assignment into Bankruptcy and at present is an undischarged Bankrupt. The Respondent tendered as Exhibit 9 in these proceedings his Notice of Bankruptcy. We note that Exhibit 9 reveals that both clients that loaned the Respondent money are listed as creditors and are still owed $224,000 and $120,000 respectively. The Panel notes that there is virtually no chance these victims of the Respondent's professional misconduct will ever be made whole.

Acknowledgement of the misconduct and remedial action

[19] The Respondent deserves credit for "falling on his proverbial sword." At the outset of the hearing on sanction the Respondent advised the Panel that "he is 64 years of age; a broken man; he had to move communities because of shame; he has suffered for ten years from chronic depression; he has no means to pay anything; he is truly remorseful and feels a lot of shame and self-loathing."

[20] The Respondent went on to explain to the Panel that he understood the depth of his wrongdoing; that he no longer has any confidence in his personal judgment and that he has taken himself out of practice by ceasing to be a member of the Law Society of British Columbia.

Range of sanctions in prior similar cases – Acting when having a financial interest

[21] The cases described below are a selection of cases with similar conflict of interest conduct. They have the following points in common, which are similar to the present case:

(a) all respondents had long careers and were experienced in their fields;

(b) the hearings proceeded by way of agreed statements of fact in which the respondents took responsibility for their conduct;

(c) each case had some level of dishonesty; and

(d) the hearing panels accepted that it would be unlikely for the respondents to repeat similar conduct therefore specific deterrence was not a primary consideration. However, general deterrence was important for cases involving conflicts of interest.

[22] In *Dent*, the respondent borrowed money from a friend of his wife. He secured the loan by drawing up and registering a mortgage against his home. This loan was the third mortgage on the property, and he did not advise the lender of her priority interest. He also neglected to advise that she obtain independent legal advice. After separating from his wife, the property was sold during foreclosure proceedings. The lender did not recover any of the loaned money. Instead, she had to sue Mr. Dent. He received a suspension of one month.

[23] In *Coglon*, the respondent covertly assisted an employee of BC Hydro in acquiring shares in an affiliated company called IPL over two transactions. He acted for BC Hydro and IPL. BC Hydro had given strict instructions that no employee should be allowed to obtain shares in IPL. Furthermore, Mr. Coglon's family had a financial interest in IPL. The hearing panel noted that the duty of loyalty was "one of the core values of the legal profession, perhaps the core value."

[24] At the time of the sanction decision, Mr. Coglon had been a former lawyer for three years. He had applied for readmission. The Credentials Committee had ordered a hearing; however that hearing was adjourned pending the outcome of the discipline

process. Citing the need for general deterrence, the hearing panel directed that Mr. Coglon be suspended for one month and his suspension was to commence one week after the release of the decision.

[25] In *Seifert*, the respondent provided legal services for the vendor of a proposed acquisition of shares of a company when he had shares in that company. In addition, he advised the company not to disclose to the public facts relating to potential financing. Armed with that knowledge, he purchased and sold shares in the company for his benefit. He received a financial benefit from this conduct. The conduct took place over one and a half years. He self-reported to the Law Society only after being sanctioned by the BC Securities Commission for insider trading. The hearing panel ordered that he serve a two-month suspension.

Misleading counsel and the court

[26] In *Galambos*, the hearing panel described the range of sanctions for misleading the court as "perplexing." Mr. Galambos was present during a discussion in the office regarding the necessity to serve the defendant with respect to a notice of motion and supporting affidavit on a short leave application. He attended court with respect to that application. The Court asked him directly whether the defendants had been served with the writ of summons, statement of claim, and notice of motion. Mr. Galambos represented that the defendant had been served with all of the above. A junior associate, present in the court at the time, informed Mr. Galambos of his misrepresentation. Mr. Galambos did not return to court to correct the record. The hearing proceeded by way of an agreed statement of facts. He received a suspension of one month.

[27] By contrast, in *Law Society of BC v. Nejat*, 2014 LSBC 51, Mr. Nejat received a $5,000 fine for a similar failure to correct the court record. Mr. Nejat also misled opposing counsel, the opposing party and the court on a second occasion. In the first court appearance, Mr. Nejat failed to disclose that he no longer held funds in trust when the court ordered those funds be frozen. The hearing panel accepted that he was unaware at the time of the court proceeding whether the funds had been paid out. However, he knew, or ought to have known, that the funds no longer remained in trust shortly after the first hearing. He provided opposing counsel with a copy of the court order without comment about the true state of the trust funds. Later, he sought the consent of the opposing party (then self-represented) to the release of funds to his client when he knew the funds had already been released. Months later, he represented to the court that he did not know whether the funds were still in trust.

DISCIPLINARY ACTION

[28] The Panel has concluded that the penalty in this matter for all eight findings of professional misconduct should be a global sanction. A suspension of four months is the appropriate disposition in this matter, the suspension to commence upon the issuance of this decision. Members of the profession must know that borrowing money from a client fundamentally alters the solicitor-client relationship. In a case such as this, no doubt the individuals who lent money to the Respondent did so because they trusted him. Trust is the very foundation of a solicitor-client relationship and the Respondent's professional misconduct in this case breached that trust.

[29] Furthermore, it is impossible for the lawyer to act objectively for the client when he is beholden to the client as in this case. The Respondent's professional misconduct was a clear violation of the PCH in that he took advantage of his special relationship with these clients as their lawyer. Accordingly, the public must know that this type of conduct will attract the most serious sanctions if lawyers choose to cross the line and borrow money from individuals who are their clients.

COSTS

[30] Although there is virtually no chance the Law Society can collect on costs awarded because of the Respondent's bankruptcy, the Panel has concluded that, for general deterrence purposes, costs of $5,706.10, as calculated under the tariff provisions in the Rules, be awarded to the Law Society.