2004 LSBC 38
Report issued: October 6, 2004
Oral Reasons: October 5, 2004
Citation issued: January 23, 2004

The Law Society of British Columbia
In the matter of the *Legal Profession Act*, SBC 1998, c.9
and a hearing concerning

JAMES LINDSAY HARRIS

Respondent

Decision of the Hearing Panel

Hearing date: October 5, 2004

Panel: Patricia Schmit, Q.C., Single Bencher

Counsel for the Law Society: Gerald Cuttler
Counsel for the Respondent: William Smart, Q.C.

[1] On January 23, 2004, a citation was issued against the Respondent pursuant to the *Legal Profession Act* and Rule 4-15 of the Law Society Rules by the Executive Director of the Law Society of British Columbia pursuant to the direction of the Chair of the Discipline Committee. The citation directed that this Panel inquire into the Respondent' s conduct as follows:

> 1. You charged as disbursements to three clients, namely F, S and T, expenses which were not related to work done on the file and were personal in nature without the consent of the clients.

[2] Pursuant to Rule 5-2(2) the Respondent agreed to a Panel consisting of a single Bencher.

[3] This citation comes before this Panel as a conditional admission of a disciplinary violation and consent to specific disciplinary action pursuant to Rule 4-22. The Respondent admitted that he professionally misconducted himself and consented to the following disciplinary action:

> (a) a reprimand;
>
> (b) to pay a fine in the amount of $1,000.

Statement of Facts

[4] The Respondent' s Statement of Facts was filed as Exhibit 3 in these proceedings. It provides as follows:

> 1. The Respondent is a securities lawyer. He was a sole practitioner (although in a shared office) from late 1993 until late 1999 when he joined the firm of W. The Respondent found that the disbursements charged to clients at W were significantly higher than he had charged as a sole practitioner. Soon after he joined the firm, the securities market in general and the DOT.COM industry in particular, began to suffer a significant decline. The Respondent found that many of his competitors were charging far less for disbursements that he was. The Respondent discussed with the firm his concerns about charging

these disbursements but ultimately he understood that it was necessary for him to charge his clients the same rates as the other lawyers in the firm charged their clients.

2. As a securities lawyer, the Respondent often does work at home on weekends; and in the early morning hours or in the evenings, on weekdays. He frequently is required to make long distance telephone calls or to send documents by fax, on behalf of his clients from his home office or from his cellular phone. He viewed the administrative procedures at W for seeking reimbursement for these disbursements (and then charging them to the particular client), unduly cumbersome. He also found it difficult to adjust to the procedures for charging personal disbursements incurred while working at the office. Personal expenses were charged as office expenses and approximately once a month, staff would make enquiries of each lawyer for explanation.

3. Photocopying was one of the disbursements that the Respondent was reluctant to charge his clients given the rates W charged. He eventually decided that he would personally pay at least some part of the photocopying. To facilitate this, during the last six months of his employment at the firm, he used a dormant file of the client T to charge some of his clients photocopying as well as some personal photocopying. The amount charged to this file over this six month period of time was approximately $1,300.00. Most of it was photocopying done on behalf of clients. The photocopying charged to this file was never intended by the Respondent to be billed to the client T. The Respondent intended to pay these charges himself and did so at the time he left the firm. As this was a dormant file and the Respondent was identified in the system as the person making the photocopying, the Respondent felt there was little risk of these disbursements being inadvertently billed to T.

4. With respect to client F, the Respondent intentionally charged and billed to this client, personal faxes and long distance telephone calls totalling approximately $40.00. With respect to client S, the Respondent intentionally charged and billed to this client, personal faxes and long distance telephone calls totalling approximately $35.00. The Respondent believed these personal disbursements billed to these two clients represented a fair set-off for disbursements he had personally paid on their behalf for long distance telephone calls and faxes sent, while working on their behalf, from his home. He was in fact, in error. He had personally paid approximately $37.00 for disbursements of the client F and approximately $14.00 for disbursements of client S. While he had personally paid other disbursements for other clients (without seeking compensation), he had underestimated by approximately $25.00 the total disbursements he had personally paid on behalf of F and S. In March, 2003, shortly after leaving W, he paid the full amount of the personal disbursements charged to these two clients (approximately $40.00 and $35.00).

5. With respect to the S file, between December 16, 2002 and the Respondent' s departure from the firm in March, 2003, there was approximately $72.00 in personal disbursements charged but not billed to this file. These disbursements were never intended to be billed to the client by the Respondent. By this time the S file had become virtually dormant as there was no further work being done or intended to be done on the file. The Respondent used this file during this period of time, like the dormant T file, simply for convenience to charge disbursements that he intended to pay personally, and did.

6. In summary, the Respondent charged and billed to clients S and F, approximately $75.00 in personal disbursements. He did so believing they represented a fair set-off for disbursements that he had paid personally on their behalf. At the time, he believed that by doing so he could avoid the difficulties he perceived existed in trying to charge and recover disbursements he paid on behalf of these clients while working at home; as well as the difficulties he perceived existed in attempting to charge and reimburse the firm for personal disbursements he incurred while working at the office. He was in error by approximately $25.00. The full $75.00 has been repaid to the clients. There was also approximately

$1,300.00 in photocopying charged in late 2002 and early 2003 to a dormant file of the client T. Most of this photocopying was done for other clients. Although these disbursements were charged to this file, the Respondent never intended to bill these disbursements to the client T. He paid these disbursements himself. In late 2002 and early 2003, the Respondent used client S' s file, which by this time had become inactive, to charge but not bill, approximately $72.00 in personal disbursements. He did so for administrative convenience. He never intended to bill these disbursements to the client. He paid these disbursements himself.

[5] After considering the circumstances set out in the Statement of Facts, and having heard the submissions of counsel, the Panel accepts the admission and finds that the Respondent professionally misconducted himself.

[6] The Panel further finds that the penalty proposed by the Respondent and recommended by the Discipline Committee to be appropriate in all of the circumstances.

[7] It is accordingly ordered that the Respondent be reprimanded, and pay a fine of $1,000, payable within 30 days.

[8] This Panel also ordered that the Respondent pay costs in the amount of $4,300, within the next thirty days.

[9] The Executive Director is instructed to record the finding of professional misconduct on the Respondent' s Professional Conduct Record, to impose the disciplinary action and to inform the complainant of the disposition.

[10] Counsel on behalf of the Respondent has applied for anonymous publication of this matter, pursuant to Rule 4-38.1(4). The application has been adjourned to November 30, 2004, at 8:30 a.m. for a telephone conference to fix a date for the hearing of that argument.