

2017 LSBC 38

Decision issued: October 30, 2017

Citation issued: October 11, 2016

THE LAW SOCIETY OF BRITISH COLUMBIA

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

and a hearing concerning

GLENFORD EMERSON GREENE

RESPONDENT

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

Hearing date: May 29, 2017

Panel: Gregory Petrisor, Chair
Gavin Hume, QC, Lawyer
Laura Nashman, Public representative

Discipline Counsel: Carolyn S. Gulabsingh
Appearing on his own behalf: Glenford E. Greene

INTRODUCTION

- [1] The Respondent faces a citation that alleges that the Respondent was involved in a verbal altercation with opposing counsel in Provincial Court. The citation alleges that the Respondent breached his duty to maintain a courteous and respectful attitude towards the court, as described in Rules 2.1-2(a) and 5.1-1 of the *Code of Professional Conduct*, and failed to conduct himself with courtesy and civility towards other counsel, as described in Rules 2.1-4 and 5.1-5 of the *Code of Professional Conduct*.

- [2] The Law Society and the Respondent submitted an Agreed Statement of Facts, and we had the benefit of video and audio recordings, as well as a transcript of proceedings of the alleged altercation.
- [3] The facts in respect of the events that led to the citation are not in dispute. The Respondent and opposing counsel attended a Family Case Conference with their clients in person, and a judge of the court attended via video and audio connection. A few minutes into the proceedings, the Respondent and opposing counsel began arguing and talking over one another, and opposing counsel asked the Respondent, “Could you shut up?” The Respondent reacted by getting out of his chair and approaching opposing counsel, standing over him, saying, “You shut up yourself. You shut up. Don’t tell me to do anything back and forth like this. I won’t put up with this. Who the hell do you think you are anyway?” The presiding judge was eventually able to shout over the exchange between the Respondent and opposing counsel, shouting “Counsel. Counsel. What are you doing? What are you doing?”, ending that exchange. The heated exchange between the Respondent and opposing counsel took only a few seconds.
- [4] Later that same day, the Respondent forwarded a letter to court staff apologizing for his part in the “disgraceful display” in proceedings earlier that day, and asking that the letter be passed through appropriate channels to the presiding judge.
- [5] That same day, the Respondent also forwarded a letter to opposing counsel, suggesting that they should not be behaving as they did in court earlier, and should agree that what took place will not happen again, but also saying “if you continue to insult me and my clients, I am going to stand up for them.”
- [6] The Respondent, in the hearing before us, said he has thought about his role as senior counsel, and his responsibility to set a good example for more junior counsel. The Respondent also said that he has taken active steps to improve his relationship with opposing counsel and their relationship is now better than it has ever been in the past.
- [7] The Respondent admitted service of the citation. He admitted that his conduct alleged in the citation constitutes professional misconduct.

DECISION ON FACTS AND DETERMINATION

- [8] The Law Society bears the onus of proving the allegations made in the citation, on a balance of probabilities, as described in *FH v. McDougall*, 2008 SCC 53, *Law Society of BC v. Schauble*, 2009 LSBC 11 at paragraph 43, and *Law Society of BC v. Harding*, 2013 LSBC 25 at paragraph 49.

- [9] As stated above, the Law Society and the Respondent agree on the facts and documents as contained in the Agreed Statement of Facts. In addition, the exchange between counsel that is the subject of this matter is captured on a transcript, a video recording and an audio recording, all of which were before us. There is no disagreement on the facts, and we find the Law Society has proven the allegations contained in the citation on a balance of probabilities.
- [10] We must determine whether or not the Respondent's conduct constitutes professional misconduct. The test for that determination, as described in *Law Society of BC v. Martin*, 2005 LSBC 16 at paragraph 171, *Re: Lawyer 12*, 2011 LSBC 11 at paragraph 14, and *Re: Lawyer 12*, 2011 LSBC 35 at paragraph 8, is whether or not the Respondent's conduct is a marked departure from the conduct the Law Society expects of lawyers.
- [11] Rules 2.1-2(a), 2.1-4(a), 5.1-1 and 5.1-5 of the *Code of Professional Conduct* make it clear that lawyers are expected to conduct themselves with honour and display courtesy, respect and civility to the courts and other members of the profession. The Respondent has described his own conduct as "disgraceful", "foolish" and "embarrassing". He has acknowledged he could have dealt with the situation better. The Respondent has acknowledged that his conduct constitutes professional misconduct.
- [12] The conduct alleged and admitted to by the Respondent is a marked departure from what is expected by the Law Society of lawyers. The conduct alleged and admitted to falls short of what would reasonably be expected by a member of the public, or by a court staff member or judicial officer. We find the Respondent's conduct constitutes professional misconduct.

DECISION ON DISCIPLINARY ACTION

- [13] The Respondent has been practising law in British Columbia since 1980. He has a Professional Conduct Record that includes four conduct reviews, one proven citation, and a referral to the Practice Standards Committee. In the proceedings involving the citation, the Respondent was found to have committed professional misconduct by making inappropriate comments about another lawyer and members of the judiciary in a series of letters. In those proceedings, the Respondent was fined \$3,000. Intemperate and inflammatory language, and an unnecessarily combative and aggressive approach to conflict, form a recurring part of the subject matter of the Respondent's Professional Conduct Record.
- [14] Counsel for the Law Society submits that the Respondent be fined \$10,000. The Respondent submits that the local attention this matter has received and will

receive in his community, as well as the cost of his having to travel to deal with this matter, are significant to him, and an additional fine will be of no public benefit. The Respondent submits that he should receive a reprimand as the disciplinary action for his conduct in this matter.

[15] The decision of the hearing panel in *Law Society of BC v. Ogilvie*, 1999 LSBC 17, sets out a non-exhaustive list of factors that may be considered in the determination of the appropriate disciplinary action to be taken. We are not listing all the listed factors here and are modifying them for our purposes, but the factors that are of the most use in our analysis are as follows:

(a) the nature and gravity of the conduct proven;

As described, the exchange between the Respondent and opposing counsel was brief and was the result of a rapid escalation of a dispute during submissions to the court. The conduct, while certainly not appropriate conduct by the Respondent, is not of a gravity or nature on the more serious end of the scale.

(b) the age and experience of the Respondent;

The Respondent is senior, experienced counsel. Based on what he has said in relation to this matter, the Respondent knows better than what is reflected by his conduct under consideration in this matter. The Respondent's age and experience is an aggravating factor.

(c) the previous character of the Respondent, including details of prior discipline;

As stated, the Respondent does have a Professional Conduct Record. The Respondent has already been encouraged to moderate his language and approach, and has been sanctioned for inappropriate comments about another lawyer and members of the judiciary. This is an aggravating factor.

(d) the impact upon others;

Members of the bar are expected to respect and uphold the dignity of the courts. The presiding judge, in attending remotely, must have expected counsel could maintain a civil exchange between them. It is in the public interest that counsel act appropriately while in court. The Respondent's conduct reflects badly upon himself, the profession and the court. This is an aggravating factor.

- (e) whether the Respondent has acknowledged the misconduct and taken steps to redress the wrong, and the presence or absence of other mitigating circumstances;

On the same day of the exchange between counsel, the Respondent apologized to the court in writing. On that same day, the Respondent wrote to opposing counsel. Counsel for the Law Society points out that the Respondent's letter to opposing counsel cannot be characterized as an apology. However, the Respondent's letter to opposing counsel is a clear acknowledgement of misconduct and a commitment from the Respondent to conduct himself in an appropriate manner in the future. In the proceedings before us, the Respondent accepted responsibility for his actions and for his role in the exchange between counsel escalating. He specifically did not blame opposing counsel. He appears to have reflected on his conduct and on his role as senior counsel to lead by example. He has taken active steps to improve his relationship with opposing counsel. This is a mitigating factor.

- (f) the impact of the proposed penalty on the Respondent;

As stated, the Respondent submits that a fine serves little purpose and the attention this matter has attracted and will attract in his community has had a significant impact upon him. Every lawyer lives and works in a community. The publication of a citation, discipline hearing and disciplinary action presumably has a negative impact on the lawyer whose conduct is under examination. It is neither an aggravating nor mitigating factor.

- (g) the need for specific and general deterrence and the need to ensure the public's confidence in the integrity of the profession; and

The Law Society's expectations of the Respondent and other members of the profession must be clear. The Respondent did not try to excuse or justify his conduct. Significant misconduct must attract a significant sanction to be meaningful to the Respondent, to other members of the profession, and to members of the public.

- (h) the range of penalties in similar cases.

We have reviewed the cases cited by the Law Society including *Law Society of BC v. Johnson*, 2014 LSBC 08; 2015 LSBC 50; *Law Society of*

BC v. Foo, 2013 LSBC 26; 2014 LSBC 21; 2015 LSBC 34; *Foo v. Law Society of BC*, 2017 BCCA 151.

In *Johnson* and *Foo*, the respondents were suspended: *Johnson* for 30 days and *Foo* for two weeks. The Law Society submitted that in the circumstances of this matter, a fine was more appropriate as the respondent, amongst other steps, had made a prompt apology to the court and the respondent immediately wrote to Mr. Hudson in an effort to reconcile their relationship. We agree with that submission.

As the Law Society submitted and as can be seen from a review of the cases provided by the Law Society including the *Johnson* and *Foo* decisions, incivility that is found to be professional misconduct is most frequently met with a fine and suspensions are more likely ordered in cases involving physical contact, profanity or a potential threat of violence. As a result, we agree that a fine is more appropriate than a suspension as there was no physical contact, profanity or threats of violence.

In *Law Society of BC v. Martin*, 2007 LSBC 20 at paragraph 41, the following factors were identified as the factors to be considered in determining if a suspension or a fine was more appropriate:

- (a) Did the misconduct involve dishonesty?
- (b) Did the misconduct involve repetitive acts of deceit or negligence?
- (c) Are there significant personal or professional conduct issues?

A review of those factors in the circumstances also lead us to the conclusion that a fine rather than a suspension is appropriate. There was no dishonesty or repetitive acts of deceit or negligence. In addition, there were no significant personal or professional conduct issues.

[16] In consideration of the factors listed above, the Respondent's misconduct, although significant, was a brief exchange with opposing counsel. The Respondent recognized the inappropriateness of his misconduct, apologized to the court quickly, and took responsibility for his misconduct. He has taken active steps to improve his relationship with opposing counsel.

[17] The Respondent has, in previous discipline proceedings, been fined \$3,000 for making inappropriate remarks about other counsel and members of the judiciary in a series of letters. The disciplinary sanction must be significant and must take into account the Respondent's Professional Conduct Record, but the sanction must also be proportionate. No physical contact between the Respondent and opposing counsel occurred, and counsel stopped their exchange when the presiding judge raised his voice over an audio connection. The court proceedings in which the exchange occurred were a Family Case Conference, which was not open to the public.

[18] In the circumstances, we believe a fine is the most appropriate disciplinary action we can impose. We consider \$5,000 to be an appropriate amount for the fine, in all the circumstances. We order that the Respondent pay the fine by December 31, 2017.

COSTS

[19] The Law Society is awarded costs in this matter at Scale A. If the parties are unable to reach agreement respecting costs:

- (a) the Law Society will provide its submissions regarding costs within 30 days of the delivery of these reasons;
- (b) the Respondent will have 21 days from then to submit his submissions and response; and
- (c) the Law Society will have 14 days from then to submit its response.

OTHER ORDERS

[20] At the outset of the hearing, we ordered that the public be excluded from any part of the hearing, and publication or duplication be prohibited, in respect of portions of the exhibits, that could identify the parties in the court proceedings that were the subject of this matter. Accordingly, we order that portions of the transcript of this proceeding that could identify the parties in the underlying Provincial Court proceedings, or the children of the parties, be redacted from any published or released transcript of this proceeding, pursuant to Rule 5-8(2) of the Law Society Rules. We also order that portions of the Agreed Statement of Facts (Exhibit 2) that could identify the parties in the underlying Provincial Court proceedings, or the children of the parties, be redacted from any published or released copies of the Agreed Statement of Facts, pursuant to Rule 5-8(2) of the Law Society Rules. We

further order that the transcript of proceedings at Family Case Conference (Exhibit 3) be sealed, pursuant to Rule 5-8(2) of the Law Society Rules.