



The Law Society of Upper Canada | Barreau
du Haut-Canada

LAW SOCIETY HEARING PANEL

Citation: *Law Society of Upper Canada v. Joseph Markin*, 2012 ONLSHP 0064
Date: March 27, 2012
File No.: LCN118/11

BETWEEN:

The Law Society of Upper Canada, Applicant

v.

Joseph Markin, Respondent

Before: Gerald A. Swaye, Q.C., C.S. (chair)
Christopher D. Bredt
Jan Richardson

Heard: March 27, 2012, in Toronto, Ontario

Counsel: Anne-Katherine Dionne, for the applicant
Respondent, assisted by duty counsel

Summary:

Two month suspension imposed on lawyer who associated with disbarred lawyer notwithstanding previous discipline proceedings and undertaking not to do so. In light of the breach of the previous undertaking and the repetitive nature of the conduct, it requires that the Lawyer and the profession be sent a strong message that this type of conduct is not acceptable and warrants sanction.

ORAL DECISION AND REASONS ON PENALTY

- [1] Christopher D. Bredt (for the panel):– We are reserving the right to edit or amend these reasons upon review of the transcript.
- [2] These proceedings were commenced by Amended Notice of Application dated December 6, 2011, which alleges that Joseph Markin (“the Lawyer”) engaged in professional misconduct in contravention of s. 33 of the *Law Society Act*.
- [3] The particulars of the professional misconduct alleged arise out of four complaints, all of which involve [some or all of the following] three particulars:
1. In the course of providing legal services [...] the Lawyer associated with Mr. Kopyto and/or Reznick Services Ltd. in a capacity having to do with the practice of law and without the express approval of a committee of Convocation appointed for the purpose, contrary to the letter and spirit of Rule 6.07(2) of the *Rules of Professional Conduct*;
 2. After providing his assurance to the hearing panel on November 6, 2007 that he would not associate with Mr. Kopyto and Reznick Services Ltd., the Lawyer failed to maintain the integrity of the profession contrary to Rule 6.01(1) of the *Rules of Professional Conduct* in that he acted [...] in a matter in which Mr. Kopyto and/or Reznick had involvement; and
 3. The Lawyer failed to assist in preventing the unauthorized practise of law contrary to Rule 6.07(1) of the *Rules of Professional Conduct* [by appearing in Superior Court] and relying on material which he knew or ought to have known had been prepared or drafted by Mr. Kopyto.
- [4] The parties have entered into an Agreed Statement of Facts, which was marked as Exhibit 1 on this hearing. The Agreed Statement of Facts contains the following admissions:
8. The Lawyer has reviewed the Amended Notice of Application LCN118/11 and admits the particulars contained therein. The Lawyer also admits that the particulars, as supported by the facts contained therein, constitute professional misconduct contrary to the *Rules of Professional Conduct*.

9. The Lawyer admits the authenticity of all the documents in the document books referred to in this Agreed Statement of Facts.

- [5] Following the Lawyer's admission, the panel made a finding of professional misconduct and the focus of the hearing turned to the appropriate penalty.

BACKGROUND

- [6] The Lawyer is currently 65 years old and was called to the Bar in 1974. He practises law as a sole practitioner working from a home office located on Hillmount Avenue in Toronto.
- [7] We were advised that the Lawyer has significant health issues. He has had heart surgery, a stroke, and he suffers from diabetes-related problems. We were also advised that his wife has significant health issues and is being treated in New York.
- [8] Mr. Kopyto was disbarred by order of Convocation dated November 19, 1989, and the Lawyer represented Mr. Kopyto on the appeal of the disbarment order. Mr. Kopyto owns and operates Reznick Services Ltd., a business entity through which he provides paralegal services.
- [9] The four complaints before us are all similar in nature and involved the Lawyer being introduced to the complainants [or others] by Mr. Kopyto, Mr. Kopyto and Reznick providing services to the complainants [or others] including drafting various materials, and the Lawyer appearing in court on behalf of the complainants [or others] relying on material prepared by Mr. Kopyto.

DISCIPLINE HISTORY

- [10] This is not the first time that the Lawyer has been disciplined for conduct of this nature. On November 6, 2007, a hearing panel found that the Lawyer engaged in professional misconduct particularized as follows:

In the course of providing legal services to J.A. and E.M., you associated with Harry Kopyto, a disbarred former member, and Reznick Services Ltd. in a capacity having to do with the practise of law and without the express approval of a committee of Convocation appointed for the purpose, contrary to the letter and spirit of Rule 6.07(2) of the *Rules of Professional Conduct*.

- [11] On the Lawyer's assurance that he would not associate with Kopyto and Reznick Services Ltd., the panel elected to reprimand the Lawyer. The transcript from the proceeding before the hearing panel in 2007 provides in part as follows:

The Chair (Mr. Caskey): Were the panel not satisfied that you will be correcting your personal situation, there would be reluctance to accept the joint submission. The panel, however, seeks now your assurances that unless and until you get permission from Convocation, you will not deal with Kopyto or Reznick Services. Do we have that assurance?

Mr. Markin: Yes.

The Chair: Thank you. The panel then accepts your assurances and, on the basis of that, is prepared to accept the joint submission in relation to [the] admonishment that I have just given to you and tell you that that will be the penalty that is meted out.

[12] Further on in the transcript, Mr. Caskey also advises the Lawyer as follows:

Mr. Markin, thank you for your co-operation with the Society. I know that your circumstances were difficult, and that is recognized by the panel, but I can tell you that anybody that deals with Mr. Kopyto must do so almost at their peril. This Society has found or the Law Society found him unfit to be a member of the profession and so you should take warning from that...

But I do caution you that at any time that you deal with someone that's been disbarred, there are some consequences that can befall you, so we ask that you be cautious in that regard, but we wish you well in your practice.

[13] The Order made by the panel provided as follows:

1. The licensee be reprimanded upon the licensee undertaking that he would not associate in any way with Harry Kopyto and Reznick Services Ltd. until he has the approval from a committee of Convocation to do so.

SUBMISSIONS OF THE LAW SOCIETY

[14] The Law Society is asking that a suspension of two months be imposed and that costs be fixed in the amount of \$8,000, payable within 12 months from the date that the suspension is completed. The Law Society submits that the objectives of fixing penalty are specific deterrence, general deterrence and the public interest in assuring the integrity of the profession.

[15] In light of the Lawyer's assurance that he would not associate with Mr. Kopyto and Reznick, made to a hearing panel in 2007, the Law Society's position is that a significant suspension is required in this matter.

SUBMISSIONS OF THE LAWYER

[16] Counsel for the Lawyer reviewed the facts related to the Lawyer's serious health issues. While recognizing the seriousness of the conduct admitted, she submitted that a two-month suspension was excessive in the circumstances. She also asked that the panel, if it were inclined to award costs at all, provide the Lawyer with 24 months to pay in view of his financial difficulties.

[17] The Lawyer also made submissions. He submitted that he had misinterpreted the breadth of the previous Order and undertaking, although he now recognizes that the conduct in

question was contrary to the previous Order.

REASONS AND ANALYSIS

- [18] In the panel's view, the fact of the previous discipline proceedings involving essentially the same conduct is an important factor in fixing the applicable penalty in these proceedings. In the previous proceedings, the chair of the panel specifically sought the Lawyer's assurance that he would not deal with Mr. Kopyto or Reznick. In reliance on that assurance, the panel reprimanded the Lawyer.
- [19] It is of significant concern to this panel that one week after giving the panel the assurance, the Lawyer had already breached the undertaking by associating with Mr. Kopyto and Reznick. We do not accept that the Lawyer could have been under any misapprehension that this conduct was not in breach of his undertaking.
- [20] Once given, an undertaking must be honoured, and is fundamental to the integrity of the profession. In *Law Society of Upper Canada v. Barry John Walker*, 2010 ONLSHP 49, the panel commented as follows on the importance of honouring undertakings, beginning at paragraph 20:

Addressing the matter of this proceeding, being a failure to fulfill an undertaking, I am of the view that giving an undertaking by a lawyer is a matter of honour and duty. It is a sacred promise to perform. It is intended to be relied upon, and is most likely accepted, because it is given by a lawyer as a member of an honourable profession.

The Law Society cannot sanction any erosion of the sanctity of an undertaking. If it is not meant to be honoured it should not be given. If it is given, it must be honoured.

In a commercial context, it is more and more unlikely that promises to comply or undertakings to perform are accepted in matters of commerce. However, in dealings with lawyers, all steps must be taken to preserve the belief that undertakings, once given, will be complied with.

I accept the reasoning in the *Fleming* decision at paragraph 16 that undertakings given to the Law Society, that I might parenthetically add to all parties, are fundamentally important to the administration of the Society's affairs:

As has been stated previously by other hearing panels:

The Society's governing of its members would be infinitely more complicated and costly if solicitors were not strictly required to abide by their undertakings to the Society.

- [21] In the circumstances of this case, the panel has determined that a suspension of two months is warranted. In reaching this conclusion we note that, in light of the breach of

the previous undertaking and the repetitive nature of the conduct, it requires that the Lawyer and the profession be sent a strong message that this type of conduct is not acceptable and warrants sanction.

- [22] On the issue of costs, the panel recognizes and commends the Lawyer for his efforts to co-operate with the Law Society, his agreement to an Agreed Statement of Facts and his admission of professional misconduct.
- [23] However, notwithstanding this co-operation, the Law Society has incurred significant expenses in connection with this matter. We have before us a bill of costs which shows that the Law Society incurred costs in excess of \$17,000. The Law Society asked that costs be fixed at \$8,000.
- [24] In the circumstances, we agree that this is appropriate. However, taking into consideration the Lawyer's financial difficulties, we are prepared to allow him 24 months from the end of his suspension to pay.
- [25] The Law Society has prepared a draft order, which will have to be amended to provide as follows:
1. It is ordered that the Lawyer is suspended for two months, commencing on April 2, 2012;
 2. The Lawyer shall comply fully with the Law Society's *Guidelines for Lawyers who are Suspended or Who Have Given an Undertaking not to Practise* while suspended pursuant to this Order; and
 3. The Lawyer shall pay costs to the Law Society in the amount of \$8,000 within 24 months of his return to the practise of law at the conclusion of his suspension, failing which interest will accrue at the rate of 3% *per annum* thereafter.
- [26] Those conclude my reasons. I would like to thank counsel for the Law Society and, in particular, Ms. Segal, I know you attended here as duty counsel, for your assistance at the hearing.
- [27] I would ask Mr. Markin, that you understand that in future, you cannot associate at all with Mr. Kopyto [in any capacity related to the practice of law]. The panel's view was that had the Law Society asked for a more significant suspension, we might have considered it in light of the previous Order. As did Mr. Caskey, we would ask that you comply with the undertaking, and it should be interpreted in its broadest sense possible. Thank you.