



**LAW SOCIETY TRIBUNAL
HEARING DIVISION**

Citation: *Law Society of Ontario v. Spiegel*, 2018 ONLSTH 57

Date: May 8, 2018

Tribunal File No.: PCN12/14

BETWEEN:

Law Society of Ontario

Applicant

- and -

Roland Spiegel

Respondent

Before: David A. Wright (Chair), Michelle M. Lomazzo, Catherine Strosberg

Heard: November 7 and 22, 2017, in Toronto, Ontario

Appearances:

Susan Heakes and Owen Minns, for the applicant

Respondent, self-represented

Summary:

SPIEGEL – Integrity – Failure to Co-operate – Penalty – Costs – The Paralegal was found to have committed professional misconduct by: being knowingly dishonest in materials he submitted to insurance companies; (ii) acting in bad faith and without integrity in submitting forms he was not entitled to prepare and that would increase the claims he could make for fees; and failing to co-operate over many years with the Society’s investigation – Knowingly assisting in fraud, even if it is on parties who are not a licensee’s clients, attracts presumptive revocation – The Paralegal developed a protocol involving deception and applied it in numerous cases to knowingly deceive insurance companies in order to obtain benefits for his clients and himself – This was different from false document cases involving one or two false affidavits submitted to a court or tribunal – As there were no exceptional circumstances, the Paralegal’s licence was revoked – He was to pay costs of \$175,000 within one year.

REASONS FOR DECISION ON PENALTY AND COSTS**INTRODUCTION**

- [1] David A. Wright (for the panel):– Mr. Spiegel is a paralegal who assisted clients with claims for automobile insurance benefits. In our reasons on finding, *Law Society of Upper Canada v. Spiegel*, 2017 ONLSTH 188, we found that Mr. Spiegel committed professional misconduct: (i) by being knowingly dishonest in materials he submitted to insurance companies; (ii) by acting in bad faith and without integrity in submitting forms he knew he was not entitled to prepare and by submitting multiple forms to increase the claims he could make for fees; and (iii) by failing to co-operate over many years with the Law Society investigation into his conduct. We made these findings after a lengthy hearing.
- [2] The Tribunal held a penalty and costs hearing and we reserved our decision. We find that the appropriate penalty is immediate revocation of Mr. Spiegel’s licence. We have found that Mr. Spiegel was knowingly dishonest in what he sent insurance companies, and public confidence in the honesty and integrity of every paralegal requires revocation in these circumstances unless there are exceptional circumstances. There are none.
- [3] The Law Society seeks a costs award of \$300,000, based on a Bill of Costs of approximately \$370,000, which does not include all costs. We have decided to order costs of \$175,000. This is in addition to previous costs awards of \$12,000 for unsuccessful motions brought by Mr. Spiegel. We recognize that this is a very large amount of money for Mr. Spiegel to pay, yet it only partially compensates the licensees of the Law Society for the costs of the successful prosecution. The primary factors in reducing the award from the amount requested are Mr. Spiegel’s limited ability to pay and the reasonable expectations of the parties. The costs award should not be reduced further, in recognition of the fact that Mr. Spiegel’s conduct made the hearing take much

longer than it otherwise would have.

KEY EVIDENCE AT THE PENALTY AND COSTS HEARING

Evidence Contesting the Findings

- [4] Much of Mr. Spiegel’s written and oral evidence and submissions at the penalty hearing were aimed, in essence, at showing why in his view the conclusions we reached on findings were wrong, based on the law or the facts. We have not summarized those submissions here. The place to contest our findings is on appeal, not at the penalty hearing. A penalty hearing must be based on what has been found in the findings stage. It is not a chance to re-litigate what was decided.

Character Letters

- [5] Mr. Spiegel submitted five character letters. Two were from lawyers he has worked with, Alon Rooz and Shahen Alexanian. One was from Dr. Ray Zatzman. Two were from clients, Frances Greenidge and Gwen Ferraro.
- [6] None of the letters suggest that the authors are aware of our findings. They are of very limited use in these circumstances and we give them very little weight, other than for the fact that those who continue to work with Mr. Spiegel are happy with him and impressed with his knowledge of the law in this area. As noted in *Law Society of Upper Canada v. Martini*, 2014 ONLSTH 192 at para. 63:

Regarding the character letters, the panel notes comments made by Gavin MacKenzie in *Lawyers & Ethics – Professional Responsibility and Discipline* (Carswell) page 26-45: “Character evidence is common and can be persuasive, but is much less valuable if the witnesses are not fully informed of the facts. Even then, it is difficult to gauge the extent to which evidence is affected by factors such as friendship. Virtually all lawyers are responsible for some good deeds, and virtually all are held in high esteem by some other lawyers and clients. The discipline hearing panel must ensure that the process is not transformed from a deliberative process into a referendum among members of the profession.” [emphasis added]

Remorse

- [7] Mr. Spiegel gave various statements about his remorse. The following quotations from the transcript are key examples:
- “I do have remorse, and I will say why I have remorse -- is because I relied on those things and not knowing that the Law Society may think

otherwise, I could have probably called the Law Society prior to doing what or why I was doing what I'm doing and clarify those points with respect to all the work I was doing. What is within the parameters of the paralegal? What is in the parameters of a paralegal? For me, it's whether these letters based on what I believed was not a paralegal work or the fact that I quote the legislation and case law, some also in the treatment plan for good reason because that's the law in the case law that I want or hope that the insurance adjustors would look and rely upon and act accordingly.”

- “But with respect to remorse, shall I say that I feel remorse that I didn't get paid, which I should have get paid, but I didn't get paid; however, you can say that. That I feel remorse that I paid with my money and provided the services to my clients without knowing if I get even paid or knowing that I would probably get a portion of it, not knowing exactly how much I was paying with respect to the invoices and the incurred expense. Those were all deemed incurred expense.”
- “I feel remorse that I didn't explain it properly. I feel remorse that those things -- if I could have explained during the hearing, those points, I wouldn't be in the situation that I am, so I feel sorry about that, but I mentioned it, but I had no idea that, for instance, the panel would not really understand -- didn't see why I provided the invoices.”

[8] None of these statements, and little if anything Mr. Spiegel said at the hearing or penalty hearing, reflects any acceptance of responsibility for the misconduct we found or an understanding of the effects of his actions upon others.

Effects on Mr. Spiegel

[9] Mr. Spiegel emphasized at the penalty hearing that: (i) this hearing has affected his application to become an insurance agent; (ii) he wishes to return to work as a paralegal and/or rehabilitation consultant; and (iii) he believes he can continue to assist clients by doing so.

KNOWING DISHONESTY

[10] Honesty is critical for every licensee of the Law Society, paralegal or lawyer. Clients, courts and tribunals, other licensees and those opposed in interest rely on the fact that a licensee must not knowingly misrepresent the truth.

[11] The importance of the duty to be honest, and why knowingly breaching that obligation almost inevitably leads to revocation of licence, was expressed in *Bolton v. Law Society*, [1994] 1WLR 512 (C.A.), [1993] EWCA Civ 32 (BAILII) at paras. 13 and 14, in comments that apply equally to paralegals and lawyers.

It is required of lawyers practising in this country that they should discharge their professional duties with integrity, probity and complete trustworthiness- That requirement applies as much to barristers as it does to solicitors...

Any solicitor who is shown to have discharged his professional duties with anything less than complete integrity, probity and trustworthiness must expect severe sanctions to be imposed upon him by the Solicitors Disciplinary Tribunal. Lapses from the required high standard may, of course, take different forms and be of varying degrees. The most serious involves proven dishonesty, whether or not leading to criminal proceedings and criminal penalties. In such cases the Tribunal has almost invariably, no matter how strong the mitigation advanced for the solicitor, ordered that he be struck off the Roll of Solicitors.

- [12] *Bolton* has been adopted and applied by this Tribunal and by the courts on review of its decisions in multiple cases: for example, *Law Society of Upper Canada v. Mucha*, 2008 ONLSAP 5; *The Law Society of Upper Canada v. Abbott*, 2017 ONCA 525 at para. 20; and *Bishop v. Law Society of Upper Canada*, 2014 ONSC 5057 at para. 26 (Div. Ct.). Knowingly participating in fraud attracts the presumptive penalty of revocation.
- [13] Mr. Spiegel submitted documents he knew were misleading to insurance companies from whom his clients were making claims, in order to attempt to obtain benefits for clients and for himself. In our view, the principles from *Bolton* and *Mucha* lead to the presumption of revocation here.
- [14] Mr. Spiegel's clients and the insurance companies were sometimes in an adversarial relationship through litigation. Mr. Spiegel's penalty submissions suggested that this should be treated as less serious than theft or fraud from clients. We disagree.
- [15] First, it is well-established in our case law that knowingly assisting in fraud on parties who are not a licensee's client attracts presumptive revocation. This includes, for example, knowingly charging legal aid for work not done, assisting in defrauding a mortgage lender who is not a lawyer's client, and fraud or breach of trust outside the provision of legal services.
- [16] In our view, knowing dishonesty by a licensee in a document to obtain a benefit, whether submitted to an opposing or contracting party, court or tribunal, even if in the course of litigation or an adversarial relationship, must lead to a presumption of revocation. This flows from the principles established in *Bolton* and *Mucha*. As suggested in *Law Society of Upper Canada v. Jaszi*, 2015 ONLSTH 211 at paras. 28-29 and 36-37, presumptive revocation is not reserved for billing and financial fraud.

- [17] There is a series of cases that has treated deception in the course of litigation differently from knowing participation in fraud generally. Knowingly making or commissioning a false affidavit has often resulted in a short suspension of one or two months. Recent cases have questioned whether this approach is consistent with *Bolton and Mucha: Law Society of Upper Canada v. Christie*, 2017 ONLSTH 4; *Law Society of Upper Canada v. Archambault*, 2017 ONLSTH 86; *Law Society of Upper Canada v. McQuaid*, 2017 ONLSTH 105; *Law Society of Upper Canada v. Fisch*, 2017 ONLSTH 113; *Law Society of Upper Canada v. Jaffer*, 2017 ONLSTH 211.
- [18] This case, in which Mr. Spiegel developed a protocol that involved deception and applied it in numerous cases to knowingly deceive insurance companies in order to obtain benefits for his clients and himself, is different from the false document cases involving one or two false affidavits submitted to a court or tribunal. Even if those were relevant precedents, we would not follow them on the basis that they are inconsistent with *Mucha*, *Bishop* and *Abbott*. In our view, knowingly making false representations in documents in order to try to get a benefit for a client and/or a licensee attracts the presumptive penalty of revocation.
- [19] We therefore find there is a presumption that the penalty here should be revocation.

THERE ARE NO EXCEPTIONAL CIRCUMSTANCES

- [20] Exceptional circumstances that could lead to an order other than revocation in a situation like this are limited. As the Court said in *Bishop* at para. 31:

The other observation is that the mitigating factors that will amount to exceptional circumstances in any given case are not restricted to only certain types or forms. Medical reasons or financial desperation or situations of duress serve as examples of the type of mitigating factors that may amount to exceptional circumstances but those situations are not exhaustive of such factors. That said, it remains the case that any such factors will normally have to be ones that would rise to the level where it would be obvious to other members of the profession, and to the public, that the underlying circumstances of the individual clearly obviated the need to provide reassurance to them of the integrity of the profession. I would add, on that point, that factors that provide an explanation for the conduct of the lawyer will generally be ones that would most likely reach that requisite level of mitigation but they are not the only ones that may achieve that result.

- [21] Mr. Spiegel emphasizes that he believed he was entitled to do what he was doing as a result of his interpretation of various cases and that the insurance

companies were aware and did not complain. These arguments are similar to several that we dealt with at the findings stage: see paras. 95-98. Mr. Spiegel pointed us to many cases and policies in the course of the hearing, none of which suggest that a party to a SABS claim may knowingly submit a document containing statements that are untrue. Any belief on Mr. Spiegel's part that he was entitled to submit documents that were untrue on their face because of case law, because the insurance companies expected it, or because "everyone does it" was unreasonable and inconsistent with what the public expects of paralegals.

- [22] There are no exceptional circumstances that would warrant departing from the presumptive penalty of revocation.

THE AGUIRRE FACTORS SUGGEST REVOCATION

- [23] Although we have found that this is a case for presumptive revocation as a result of Mr. Spiegel's knowing dishonesty, we consider the factors that apply to cases where there is no presumption, in the event we are wrong.
- [24] There are four primary objectives of penalty: specific deterrence, general deterrence, rehabilitation and maintaining public confidence in the legal profession. See *Law Society of Upper Canada v. Strug*, 2008 ONLSHP 88.
- [25] As set out in *Law Society of Upper Canada v. Aguirre*, 2007 ONLSHP 46 at para. 12, the key factors to apply in reaching the penalty are:
- (a) the existence or absence of a prior disciplinary record;
 - (b) the existence or absence of remorse, acceptance of responsibility or an understanding of the effect of the misconduct on others;
 - (c) whether the member has since complied with his/her obligations by responding to or otherwise co-operating with the Society;
 - (d) the extent and duration of the misconduct;
 - (e) the potential impact of the member's misconduct upon others. In this regard, consideration may be given not to the merits of the complaints that prompted the Society's intervention (unless proven at the hearing), but to how the member's unresponsiveness did or might reasonably be expected to affect the client's interests;
 - (f) whether the member has admitted misconduct, and obviated the necessity of its proof;
 - (g) whether there are extenuating circumstances (medical, family-related or others) that might explain, in whole or in part, the misconduct;

(h) whether the misconduct is out-of-character or, conversely, likely to recur.

[26] The *Aguirre* factors as a whole suggest revocation. We have taken into account the following:

- The misconduct is extremely serious, involving not only dishonesty, but also acting in bad faith and without integrity in his dealings with insurance companies. Mr. Spiegel did not comply with his obligations to the Law Society over many years and after multiple reminders and clarifications.
- The misrepresentations to insurance companies happened in multiple files and over many years. He involved various medical practitioners in them, with or without their consent, by using their signatures and names.
- Some of the misconduct, we have found, was designed to enrich himself and his company. This is an aggravating factor.
- Mr. Spiegel has no prior discipline record.
- Mr. Spiegel has shown little to no remorse for, or recognition of, the effects of his misconduct on the integrity of the statutory insurance system, his clients and the ability of the Law Society to regulate paralegals in the public interest by obtaining responses from them in a timely way.
- Mr. Spiegel never provided a complete response to the Law Society. He continued to produce documents at the hearing that he should have provided years earlier.
- We are unable to say that his misconduct is out-of-character or will not recur, given among other things his lack of recognition of the obligation not to file documents that are misleading on their face. We doubt he would fulfil his responsibilities to the Law Society as a licensee, were he to continue to be licensed.

COSTS

[27] The Law Society's Bill of Costs reflects a total of \$244,930 in counsel time for Ms. Heakes, \$127,844.50 in counsel time for Mr. Minns, and \$11,467.33 in disbursements. The most significant disbursements are for transcripts and scanning. The total costs incurred under the tariff are \$384,241.83, from which the Law Society deducts costs claimed in the motions for which costs were already awarded, to reach a total of \$370,234.83.

[28] The Law Society has not included certain disbursements in the amount claimed, such as photocopying and travel to Richmond Hill to attend the hearing. Other counsel and students assisted in this matter, but their time has not been included. In addition to these reductions, the Law Society has recognized that

there was some duplication of work between Ms. Heakes and Mr. Minns and reduced the amount it claims to \$300,000.

- [29] Costs awards recognize that the licensees of the Law Society fund a prosecution like this one through their fees. This hearing took place over 33 hearing days. These were usually half-days as a result of an accommodation of Mr. Spiegel's health issues. There were also two pre-hearing conferences and five proceeding management or case management attendances.
- [30] We have taken into account the factors set out in *Law Society of Upper Canada v. MacFarlane*, 2009 ONLSHP 47 at para. 37. The most important factor in our award of costs is that this hearing took much longer than it should have, and required more work and time by Law Society counsel, because of how Mr. Spiegel acted. Mr. Spiegel's evidence, cross-examinations and submissions were repetitive, often irrelevant and involved repeated failures to follow the panel's directions. Hearing days took extra time because Mr. Spiegel came unprepared. Mr. Spiegel did not make any effort to ensure an efficient hearing or effective use of the time of the panel, the Law Society or its witnesses. On the contrary, he tried to delay and refused to accept responsibility for his own part in ensuring an effective hearing.
- [31] Mr. Spiegel's inadequacy of preparation and lack of consideration for the time or costs of the hearing was made plain when, on September 30, 2015, a specific appearance was scheduled in advance for the purpose of Mr. Spiegel providing voluminous documents. When the day arrived, Mr. Spiegel provided a single page. He chose not to advise the Tribunal beforehand that the scope of his evidence was so significantly reduced.
- [32] We are prepared to reduce the amount somewhat, to reflect Mr. Spiegel's financial circumstances, including what appears to be a relatively modest income, amounts owed on his property and the fact he will no longer be able to work as a paralegal as a result of this decision. We also take into account, as we said at para. 100 of our reasons on finding, that had the Law Society narrowed and refocused its arguments earlier in the case and more clearly, this might have helped avoid some of the unwieldiness of the evidence and the hearing.
- [33] However, we will not reduce the amount of costs claimed by the Society nearly as much as we would have done, had Mr. Spiegel's conduct not been the major contributor to such a long hearing. Recognizing that the Law Society has already reduced the costs claimed from those incurred, we will reduce them to \$175,000 to reflect the above factors.
- [34] We note that this amount is in the range of costs awards for similar hearings. Assuming the time spent in half-days was equivalent to about 15-18 full hearing

dates, we note the awards in hearings of similar length in *Law Society of Upper Canada v. Sriskanda*, 2016 ONLSTH 33 (\$150,000); *Law Society of Upper Canada v. Groia*, 2013 ONLSHP 59 (\$246,960.53), reduced to \$200,000, 2014 ONLSTA 11; *Law Society of Upper Canada v. Farkas*, 2017 ONLSTH 75, upheld 2018 ONLSTA 2 (\$200,000).

[35] Our order will bear interest as of one year from now, at the current post-judgment interest rate of 3% per year.

ORDER

[36] Our Order will provide:

- 1) Roland Spiegel's licence to provide legal services is revoked, effective immediately.
- 2) Mr. Spiegel shall follow the *Guidelines for Former Paralegals Whose Licences Have Been Revoked or Who Have Been Permitted to Surrender Their Licences*.
- 3) Mr. Spiegel shall pay costs to the Law Society of \$175,000. Effective one year from the date of this Order, Mr. Spiegel shall pay interest on any unpaid portion of the costs at the rate of 3% per year.