

Asking whether a lawyer acts as an honest person not helpful for determining dishonesty (Grosvenor Property Developers Ltd. v. Portner Law Limited)

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Lawyers are expected to act honestly when providing legal services to a client. A lawyer who acts dishonestly breaches the trust of their client, brings the administration of justice into disrepute, and exposes the lawyer to regulatory discipline and potential disbarment. Accordingly, dishonesty is a serious allegation which adjudicators must carefully consider before rendering judgment.

As determined by the English Court of Appeal (Civil Division) in *Grosvenor Property Developers Ltd. v. Portner Law Ltd.*, [2026] EWCA Civ. 1238, applying a single test of asking whether a person acts as an honest person or honest lawyer is not a particularly helpful tool for determining dishonesty.

In this case, the claimant brought an action against a law firm in connection with three transactions worked on by one of its partners, B.

The claimant was Grosvenor Property Developers Ltd. (“**GPDL**”), which had suffered a £7 million misappropriation of funds at the hands of its sole *de jure*, JE and its *de facto* director, SV.

The first transaction dealt with an aborted purchase of a property on Green Street. The second transaction involved the purchase and subsequent sale of a property on Hallam Street. The third transaction involved a loan of £2 million from Dare to Invest Limited (“**Dare**”) for the purchase of a property on Charles Street.

At the time of these transactions, B took instructions from SV. B had initially been introduced to SV by another lawyer, who said that SV was looking for a lawyer for his son. B met with SV and his son and opened a file under the name of My Casa PBSA Limited (“**My Casa**”). SV was the sole shareholder and director of My Casa.

On the first transaction, Green Street was to be bought in the name of SV’s son. A £30,000 deposit was transferred to the law firm’s client account from an account in the name of Casa Investments Limited (“**CIL**”). CIL’s sole shareholder and director was JE.

In answer to a request from an estate agent for proof of funds, B provided a bank statement which SV had given to him showing cash funds exceeding £8 million.

However, this account was in the name of SV’s son, used a post office box address in Dubai and showed no movement of funds in or out.

B carried out no anti-money laundering or client identity checks on CIL.

When the transaction was aborted, the deposit funds, less a transfer fee, were returned to an account in SV’s name rather than CIL.

With respect to the second transaction, the firm received a £78,000 deposit again from CIL. The balance of the purchase price for the transaction was paid by SV. However, in communications with the mortgage lender, B confirmed that nobody apart from SV's son would be contributing funds to the purchase. B also gave an undertaking to notify the lender of any changes to the information supplied.

Although B's representation to the lender was inaccurate, he treated monies coming from SV, his son and My Casa as one "family pot". B also mistook CIL for My Casa.

The Hallam Street property was purchased in the name of SV's son, and later transferred to My Casa. A new loan was taken in connection with this transfer and funds were disbursed to different accounts, including a CIL account, and accounts in the name of Dare and "S. Varma". Hallam Street was then resold and SV directed that the net sale proceeds be disbursed to another law firm. No confirmation was received from this law firm that it had been instructed by CIL or My Casa to receive these funds.

With respect to the Dare transaction, SV's son transferred the £2 million loan to the firm's client account and told B that he was the sole director and shareholder of Dare and that Dare was in the business of making loans. Two months later, B was told that Dare would be making a loan to Grosvenor PBSA Limited for the Charles Street property. B advised SV and his son that the borrower's lawyer would inquire as to the source of the funds. SV replied that his son had received the money as a gift, which had been "all approved by the Home Office."

GPDL alleged that B and his firm had carried out these transactions while turning a "blind-eye", failing to conduct the proper due diligence, and were thus liable for dishonest assistance of breaches of fiduciary duty by its former directors.

The judge at first instance agreed with GPDL applying the standard of an honest solicitor with B's level of experience and knowledge. The judge noted that B was a partner at the firm and its deputy anti-money laundering officer. Furthermore, the judge noted that it was undisputed that B had failed to comply with the firm's policies and the Law Society's money laundering guidance.

More specifically, in the three transactions, the judge found, among other things, that B had failed to adequately distinguish between the individuals and entities involved, that he failed to conduct adequate due diligence in circumstances that would have concerned an honest lawyer, and that he provided untrue information to others.

The judge further found that B had "knowingly [cut] corners in the carrying out of essential checks" and that his "behaviour amounted to reckless disregard for another's possible rights."

The law firm appealed.

The outcome of the appeal turned on whether the trial judge had erred in applying the law regarding dishonesty. The Court of Appeal found that the judge had applied a single test. However, this was contrary to governing legal principles, which recognized a mandatory two-step test for establishing dishonesty.

Under this two-step test, the court was first required to ascertain the lawyer's actual state of mind. This was a subjective test. At the second stage of the test, the court was required to determine whether, given that state of mind, the lawyer's conduct was honest or dishonest by applying the standards of ordinary decent people. This was an objective test.

Furthermore, to establish "blind-eye" knowledge, on which the judge anchored her findings of liability, it had to be shown that the lawyer was suspicious that certain facts might exist and that the lawyer made a deliberate decision to avoid taking steps that would confirm their existence.

These requirements were subjective, and the suspicion had to be "firmly grounded and targeted on specific facts, and the deliberate decision not to ask questions must be a decision to avoid obtaining confirmation of facts in whose existence the individual has good reason to believe."

By simply focusing on whether an honest solicitor with the skills and experience of B would have acted the way that he did, the judge inappropriately merged the mandatory two-step approach into a single test.

The appellate court concluded that this error contributed to an error in analysis regarding whether B was liable for "blind-eye" assistance or "blind-eye" knowledge.

The judge failed to recognize that there was a need for any suspicions about the transactions to be targeted. Although the judge found that B had been reckless and that recklessness was "certainly strong evidence of dishonesty", the Court of Appeal stated that recklessness was not the same as dishonesty and was not



the same as actual or blind-eye knowledge.

As well, the Court of Appeal found that the judge applied standards of diligence to B's conduct rather than dishonesty.

Based on the factual findings of the judge, B had genuinely believed that SV and his son were "legitimately" wealthy and that SV was proposing to buy properties for his son.

Furthermore, the judge had accepted that B believed that he had received funds from My Casa rather than an unconnected company, CIL, and there was no finding that B had any suspicion that anyone outside of the "family unit" had a legitimate claim to the funds used and disbursed in the transactions.

Lastly, the Court of Appeal noted that the judge made no finding that B had consciously decided not to ask further questions of SV for fear of what he might find out. Although B had cut corners, this was not enough to support a conclusion that he had acted dishonestly.

In the result, the appeal was allowed and GPDL's claim was dismissed.

The key takeaway from this case is that allegations of dishonesty against a lawyer require adjudicators to undertake a careful and detailed analysis of the facts of a lawyer's alleged wrongful conduct. In general, lax behaviour and sloppy legal work will not, without more, amount to dishonesty. Furthermore, as explained by the Court of Appeal, there is a critical distinction between negligent behaviour and dishonesty.

It remains to be seen if the analysis of dishonesty in this English case will have an impact on Canadian case law.

(This blog is provided for educational purposes only, and does not necessarily reflect the views of Gardiner Roberts LLP).

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