



Please refer to our File No. 20110595

November 4, 2011

CONFIDENTIAL

Sent via email & mail

Andrew Skolnick
75 Berehaven Drive
Amherst, New York 14228

Dear Mr. Skolnick:

Re: Michael Scherr, Our File No. 20110595

Further to our telephone conversation of November 3, 2011, I have now received a response from Mr. Scherr to the concerns raised in the materials you provided to the Law Society regarding the role of John O'Sullivan in the case of *Mann v. Ball, The Frontier Centre for Public Policy Inc., and John Doe*. As we have discussed, portions of Mr. Scherr's response, and the attachments he provided, are privileged and cannot be disclosed to you.

Summary of Response

Under Rule 3-5(8) of the Law Society Rules, I am providing you with an abridged form of Mr. Scherr's response, subject to solicitor and client privilege and confidentiality. I will set out the questions I asked, followed by extracts from his letter.

1. Does your law firm presently have, or did it at any time have, a professional relationship with Mr. O'Sullivan? If so, please explain the nature of the relationship and the specific role Mr. O'Sullivan has in the Ball case or any other cases.

I don't know how to answer this as I don't know what is meant by the term "professional relationship" What I can say is that our firm did not engage Mr. O'Sullivan to provide any services to our firm. Our client, Mr. Tim Ball, knew Mr. O'Sullivan from working together on a book called Slaying the Sky Dragon.

I was retained by Dr. Ball before ever hearing anything about Mr. O'Sullivan.

Mr. O'Sullivan is engaged by our client, not this firm.

So if receiving input from Mr. O'Sullivan at my client's request, and processing payment, again at my client's request, constitutes a "professional relationship" then there was such a relationship in place until August 1, 2011.

2. Were you aware of representations being made by Mr. O'Sullivan regarding his involvement as a lawyer or legal consultant for your firm on the Ball case? Did you authorize him to solicit funds for Dr. Ball's defense? Did you approve of the refund arrangement Mr. O'Sullivan outlined in the Climate Realist article? Have you been contacted by donors about this arrangement?

I was not aware that Mr. O'Sullivan was representing himself as a lawyer representing Dr. Ball in these actions. I was aware that he had told others he was a consultant regarding the legal actions commenced by Mann and Weaver against my client.

He did in fact provide consultation, a fact I did confirm for Mr. Skolnick.

I was aware he had written an article based partly upon my legal opinion and on his own legal opinion.

Solicitation of Funds

I did not authorize Mr. O'Sullivan to do anything.

I did advise that the unused funds which I received in our office could be refunded.

3. What steps did you take to determine whether Mr. O'Sullivan is in fact a lawyer prior to filing the Response? Do you have proof that he is? If so, please provide it.

Prior to filing the Response, I took no steps to investigate Mr. O'Sullivan's professional status.

This litigation involves a scientific dispute truly global in proportion. I understand that I am representing a client who is not on the "popular side" of the debate.

Billions of dollars are being spent on the theory that CO2 causes global warming. My client is a retired professor from the University of Winnipeg. For him to be able to financially support his defense including obtaining the necessary experts will cost several hundred thousand dollars. There are very deep pockets on the side of the plaintiffs and a whole machine dedicated to undermining the climate sceptics.

Assessment

An assessment involves carefully and objectively considering all of the evidence presented to me by a complainant such as yourself who feels a lawyer has acted improperly, as well as the evidence presented by the lawyer, to determine whether there is evidence of professional misconduct which might warrant disciplinary action by the Law Society.

Analysis

The established test in our jurisdiction for whether there has been professional misconduct is set out in *Law Society of BC v. Martin*, 2005 LSBC 16:

Whether the Respondent's behaviour displays culpability which is grounded in a fundamental degree of fault, that is whether it displays gross culpable neglect of his duties as a lawyer.

I am satisfied, on the evidence, that neither Mr. Scherr nor his firm, Pearlman Lindholm, retained or contracted with Mr. O'Sullivan to provide legal services in the *Mann* case or any other cases. There is no evidence that Mr. Scherr acted in a supervisory role over Mr. O'Sullivan's actions or was responsible for the false assertions published by Mr. O'Sullivan.

I am also satisfied that at the time that Mr. Scherr filed the Response to the Amended Notice of Civil Claim he did so on the basis of instructions and information he believed to be from a credible source, which he was entitled to rely upon. Despite the "warning" you provided to Mr. Scherr as to your doubts about Mr. O'Sullivan's claim that he was a lawyer, the evidence does not support an allegation that he "knowingly asserted something for which there is no reasonable basis in evidence" or that he "knowingly permitted a party or witness to be presented in a false way". It is easy to see, in retrospect, that it would have been wise for Mr. Scherr to inquire and seek verification from Mr. O'Sullivan as to his professional status prior to filing the Response. His failure to do so at that time, however, does not "display gross culpable neglect of his duties as a lawyer."

Decision

Based on the information before me, I am satisfied that the concern raised in this complaint has been adequately drawn to Mr. Scherr's attention through this process and does not support an allegation of professional misconduct on Mr. Scherr's part that would warrant further action by the Law Society. I have no doubt that in addition to the professional embarrassment this complaint has caused him, it has also provided a valuable lesson which will cause him to reflect on when it is important to embark of a line of inquiry in the future.

I am therefore closing this file under Rule 3-6(1)(a) of the Law Society Rules which states:

Rule 3-6 (1) After investigating a complaint, the Executive Director must take no further action if the Executive Director is satisfied that the complaint

- (a) is not valid or its validity cannot be proved

Keeping a record of your complaint

Thank you for taking the time to make your concern known to the Law Society. It is primarily through complaints from the public such as yours that we become aware of concerns about a lawyer's conduct and competence and can take appropriate steps to address proven concerns.

Requesting a review of my assessment

If you disagree with this assessment, you have the right to have your complaint reviewed by the Complainants' Review Committee ("CRC"). Please note the CRC can only review

information which has previously been investigated by a staff lawyer. More information about this Committee and the CRC Request Form are located on the Law Society's website available at www.lawsociety.bc.ca under the 'Complaints Tab'. If you are seeking a request for review please fill out the request form or write to Ashleigh Fasken, Paralegal to the Complainants' Review Committee stating your grounds for request. **The time limit for requesting a review is 30 days from the date of this letter.**

Complaint process is confidential

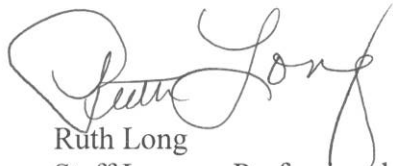
Please note that this letter and other documents relating to this complaint are not admissible as evidence in any proceedings without the consent of the author of the material or the Executive Director required pursuant to section 87 of the *Legal Profession Act*.

Opportunity to provide feedback

To assist the Law Society in ensuring that its investigation of complaints is fair and effective, I am enclosing a questionnaire I hope you will complete and return to us. Alternatively, you may complete the Survey online at:

<http://www.lawsociety.bc.ca/apps/forms/pc/ccomplaint.cfm>

Yours very truly,



Ruth Long
Staff Lawyer, Professional Conduct

Reply to: Direct line: (604) 443-5719
Fax: (604) 605-5399
E-mail: rlong@lsbc.org

c. Michael Scherr

RL/sk
20110595/4-nov311-ltr
Encls.

The Law Society
of British Columbia



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Please refer to our File No. 20110595

November 4, 2011

CONFIDENTIAL

Sent via mail

Michael Scherr
Barrister & Solicitor
201 – 19 Dallas Road
Victoria, BC V8V 5A6

Dear Mr. Scherr:

Re: Andrew Skolnick, Our File No. 20110595

Further to our telephone conversation of November 3, 2011, I confirm that I have now completed my assessment of the concerns raised by Mr. Skolnick regarding your involvement with Mr. O'Sullivan. I enclose a copy of my letter of today's date to Mr. Skolnick advising him of my assessment. In addition, I enclose a copy of an email I received from Mr. Skolnick noting various internet website and blogs in which Mr. O'Sullivan's claims that he is a legal consultant for your firm have not been removed.

Decision

As we discussed, I am satisfied that there is no evidence of professional misconduct on your part that warrants further action by the Law Society. In retrospect, I think it is easy to see that it would have been wise to seek confirmation from Mr. O'Sullivan as to his legal credentials after being put on notice of the doubts cast on his claims. I confirm your advice that this complaint has served as a valuable lesson to you and has caused you to reflect on when it is advisable to embark of a line of inquiry, to avoid this type of problem in the future.

Having canvassed these concerns with you, I am now closing this file under Rule 3-6(1)(a) of the Law Society Rules which states:

Rule 3-6 (1) After investigating a complaint, the Executive Director must take no further action if the Executive Director is satisfied that the complaint

(a) is not valid or its validity cannot be proved

Decision subject to review

Please note that my decision to close the file is subject to Mr. Skolnick's right of review before the Complainants' Review Committee.

Complaint is confidential

Please note that this letter and other documents relating to this complaint are not admissible as evidence in any proceedings without the consent of the author of the material or the Executive Director required pursuant to section 87 of the *Legal Profession Act*.

Feedback is appreciated

To assist the Law Society in ensuring that its investigation of complaints is fair and effective, I am enclosing a questionnaire I hope you will complete and return in the enclosed envelope, or, alternatively, you may complete the Survey online at:
<http://www.lawsociety.bc.ca/apps/forms/pc/lcomplaint.cfm>.

Yours very truly,

Ruth Long
Staff Lawyer, Professional Conduct

Reply to: Direct line: (604) 443-5719
Fax: (604) 605-5399
E-mail: rlong@lsbc.org

c. Andrew Skolnick ✓

RL/sk
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Encl.