

2005 LSBC 07

Report issued: February 17, 2005

Oral Reasons: February 11, 2005

Citation issued: January 28, 2004

The Law Society of British Columbia
In the matter of the *Legal Profession Act*, SBC 1998, c.9
and a hearing concerning

KENNETH NICHOLAS TASCHUK

Respondent

Decision of the Hearing Panel

Hearing date: February 11, 2005

Panel: Ralston S. Alexander, Q.C., Single Bencher Panel

Counsel for the Law Society: Brian McKinley

Counsel for the Respondent: Donald J. Livingstone

[1] On January 28, 2004, a citation was issued against the Respondent pursuant to the *Legal Profession Act* and Rule 4-15 of the Law Society Rules by the Executive Director of the Law Society of British Columbia pursuant to the direction of the Chair of the Discipline Committee. The amended citation directed that this Panel inquire into the Respondent's conduct as follows:

1. You failed to take steps in a timely manner or at all to transfer the location of the registered and records office of S.T.S. SAFE-T-STRAP LTD., thereby breaching:

(a) the following practice condition imposed on you by a Law Society hearing panel on March 29, 2000:

"[b]y no later than May 15 th, in respect of each company for which he was the corporate solicitor and which still has its registered and records office at his former law firm address, must, at his own cost, transfer the location of the registered and records office of each company either to the current address of the office at which his law practice is located or to such other address as the company may instruct him."

2. That upon moving your place of business, which was the registered and records office for S.T.S. SAFE-T-STRAP LTD., you failed to notify the registrar of the change of address, and you failed to file with the registrar the required notice of the change for S.T.S. SAFE-T-STRAP LTD., in contravention of Section 40(4) of the *Company Act*.

[2] Pursuant to Law Society Rule 5-2(2), the Respondent agreed to a Panel consisting of a single Bencher.

[3] This matter came before me as an application pursuant to Rule 4-22 of the Law Society Rules, by which a member subject to a citation is permitted to tender to the Discipline Committee a written admission of professional misconduct and to provide his consent to a proposed penalty. The Discipline Committee then considers the admission of professional misconduct and the penalty proposed and determines whether it is,

in the view of the Discipline Committee, an appropriate disposition of the citation. If the Discipline Committee decides that it is an appropriate disposition of the citation, it is obliged to instruct counsel for the Law Society to recommend that disposition to a Panel convened to hear the matter. That has occurred in these circumstances and the Discipline Committee accepted the Respondent's proposed admission of professional misconduct, penalty and costs award. The Penalty was to be a reprimand, and costs were agreed in the amount of \$2,000.

[4] Mr. McKinley, on behalf of the Law Society, has, as he is obliged to do, recommended to this Panel that the conditional admission be accepted and that that Penalty be imposed.

[5] I have heard submissions from the Law Society and I have heard submissions from Mr. Livingstone on behalf of the Respondent. I am satisfied that the Penalty that is proposed is very much within the range of appropriate penalties for circumstances such as this and I say parenthetically that if a reprimand is an appropriate penalty for breach of an undertaking and particularly for a breach of an undertaking provided to the Law Society, then it surely must be a sufficient penalty for the failure to observe a practice condition and that made more compelling when the breach of practice condition was in many ways inadvertent, and in circumstances that were, at least, clearly explicable by the Respondent.

[6] I have noted with approval the comments of Bencher Gordon Turriff in his reasons on a similar Rule 4-22 application in the matter of *Robert John Palkowski*. It is true, as Mr. Turriff observed, that there is inexplicable randomness in some of the penalty decisions on breach of undertaking matters. The Benchers should be alive to that reality and should seek to improve upon it by developing a more consistent and reasoned response to those circumstances of professional misconduct.

[7] The Penalty of a reprimand is accepted and directed by me, as is the assessment of costs in the sum of \$2,000, which I award.

[8] Counsel for the Respondent has requested time to pay and I am inclined to grant that time to pay as he has requested; namely, that the costs in the sum of \$2,000 be paid to the Law Society on that date which is the sooner of one year from today's date or that date which is six months after the Respondent is reinstated as a practicing member of the Law Society, whichever of those dates shall first occur.

[9] The Executive Director is instructed to record the finding of professional misconduct on the Respondent's Professional Conduct Record, to impose the disciplinary action and to inform the complainant of the disposition.

[10] There will be publication of this matter in the normal course.