

2006 LSBC 02

Report issued: January 12, 2006

Citations issued: September 28, 2005, December 2, 2005

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

Hugh Braker, Q.C.

Respondent

**Decision of the Hearing Panel
on Facts and Verdict**

Hearing date: December 15, 2005

Panel: G. Glen Ridgway, Q.C., Chair, Gordon Turriff, Q.C., Robert Brun, Q.C.

Counsel for the Law Society: Brian McKinley

Counsel for the Respondent: Christopher Hinkson, Q.C.

Background

[1] Two citations were issued by the Law Society of British Columbia with respect to the conduct of Hugh Braker, Q.C. (the "Respondent"), the first of which citation is dated September 28, 2005 and the second December 2, 2005.

[2] The schedule to the citation of September 28, 2005 indicates that the conduct of the Respondent to be inquired into was his conduct contrary to Chapter 13, Rule 3 of the *Professional Conduct Handbook*, and in particular that he failed to respond promptly to communications from the Law Society, being letters dated February 21, 2005, March 21, 2005, April 5, 2005 and April 8, 2005.

[3] The schedule to the citation of December 2, 2005 indicates that the conduct of the Respondent to be inquired into was his conduct contrary to Chapter 13, Rule 3 of the *Professional Conduct Handbook*, and in particular that he failed to respond promptly to communications from the Law Society, being letters dated June 16, 2005, July 18, 2005, August 3, 2005 and August 12, 2005.

[4] The Respondent and the Law Society consented to these matters being heard together, and further, that all notice and service requirements had been met and the matter was properly before this panel.

[5] The Respondent was called to the bar May 10, 1984.

[6] The Law Society and the Respondent entered an Agreed Statement of Facts with respect to both the citations and the Respondent gave evidence.

[7] With respect to the initial citation dated September 28, 2005, the Law Society wrote to the Respondent with respect to an allegation of delay on the part of Mr. Braker in handling one of his files. That letter to the Respondent was dated February 21, 2005. There was no response, nor was there a response to follow up letters of March 21, April 5 and April 18, 2005.

[8] With respect to the second citation, that is the one dated December 2, 2005, the Law Society wrote to the

Respondent on January 12, 2004. This letter was also with respect to a complaint of delay on the part of Mr. Braker respecting files over which he had conduct.

[9] Mr. Braker responded to that letter and exchanged correspondence relating to the complaint with the Law Society for some period of time.

[10] However, with respect to the Law Society letters to the Respondent of June 16, July 18, August 3 and August 12, 2005, there was no response.

[11] The Respondent admits his failure to respond to the Law Society correspondence as set out in the schedules to the citations is contrary to the *Professional Conduct Handbook* Chapter 13, Rule 3. He admits further that this amounts to professional misconduct.

[12] In addition to these submissions set out in the Agreed Statements of Facts, the Respondent gave evidence and indicated he was under significant stress for a period of time commencing in early 2004.

[13] This stress was brought about by the financial difficulties of his law firm which was near bankruptcy, and health setbacks of family members and friends.

[14] His evidence was that his firm experienced a large increase in receivables, due primarily to a large account owed to him by his most significant client not being paid. He defaulted in his payment of accounts, including missing pay-days for his staff.

[15] In addition, in the Spring of 2004, his nephew, with whom he was in a position of guardianship, died. In September of 2004 the Respondent's mother had a heart attack, from which she recovered but required a pacemaker. In March of 2005 the Respondent's father had a heart attack which required quintuple bypass surgery. Finally, in June of 2005 a good friend, family member and significant member of the aboriginal community, G.W., died. All of these events were emotionally stressful to the Respondent and resulted in extended periods of time off work.

[16] The Respondent gave evidence of the steps he has taken to overcome his problem of delays on files and failure to communicate with the Law Society. He underwent a Conduct Review by senior members of the bar in September, 2005. In addition, he has obtained Law Society, Canadian Bar, and CLE materials respecting law office management, has read those materials and implemented procedures from that information.

[17] The Respondent has adopted a new process with respect to material from the Law Society. The old process was that all correspondence from the Law Society was placed on his desk for his attention only. It was not opened by staff or any other lawyer within the office. As a result, items were overlooked during stressful periods.

[18] His new process is to open a file with respect to each item coming from the Law Society and to include that file within the regular reminder system that he has in place for all files. Staff arrangements will not permit these matters to be overlooked or unattended to.

Decision

[19] While sympathetic to the problems which can be caused by financial difficulties and health problems of a family member, the Panel notes that the decisions of prior disciplinary panels have stressed the importance of responding to Law Society communications as part of the Law Society's responsibilities to the public in carrying out its obligations in a self-governing profession. It is important that the public have

confidence in the ability of the Law Society to regulate its members and the initial or prime aspect of that responsibility requires that members respond in a prompt and forthright fashion to Law Society inquiries.

[20] In these circumstances, there was no response at all from the Respondent and the Panel has difficulty in understanding why a simple response requesting more time or explaining his difficult circumstances would not have been forthcoming.

[21] The Respondent has admitted that his conduct amounted to professional misconduct and the Panel agrees and determines that his conduct in the circumstances set out in the two citations was professional misconduct.

[22] The parties have agreed and the Panel directs that the penalty phase of this matter be set over to February 9, 2006 at 5:00 p.m. at the offices of the Law Society of British Columbia.