

Victoria, B.C.

Called to the Bar: June 26, 1975

**Discipline Hearing Panel:** January 22 and July 15, 1991

P.A. Murray, Q.C., Chair, G. Hardwick and A. Clarke

**Benchers:** November 5 and 13, 1991

J.D. Ziskrout and J. Whittow, for the Law Society

The member, on his own behalf

### **Summary**

The member delayed in responding to clients and failed to respond promptly to Law Society correspondence.

### **Facts**

The Law Society wrote to the member on September 29, 1989 requesting his explanation of a complaint. The Society wrote follow-up letters to the member on October 31, 1989 and November 14, 1989 and left a telephone messages for him to call on December 4 and 5. The Society sent another letter on December 8. The member was cited for his failure to respond on January 8, 1990. He provided the letter of explanation on April 5, 1990.

In another instance, a client of the member told the Law Society he had called or written the member at least six times to obtain the return of documents, but had received no response. Law Society staff called the member on October 24, 25 and 26, 1989 and left messages for him to call as soon as possible. The Society then wrote to Mr. Banks on October 30, 1989, following with reminder letters on November 21 and December 5, 1989 and four further telephone messages. The member did not respond to the Society, nor did he return documents to his client by early January. He provided his letter of explanation on April 17, 1990.

In another matter, a law firm complained to the Law Society on December 4, 1989 that the member had failed to pay an outstanding invoice from December 23, 1988 and had failed to respond to repeated requests for payment throughout 1989. The Law Society wrote to the member on December 12, 1989 and January 2, 1990 but received no response. The member was cited for his failure to respond. He provided a letter of explanation on April 17, 1990.

### **Decision**

The member's conduct constitutes professional misconduct.

### **Penalty**

The Hearing Panel considered the member's conduct record indicating three prior discipline matters of a similar nature and the member's failure to follow through on a counselling program for procrastination. The Panel ordered that the member be suspended for three months, pay costs of the discipline proceedings not exceeding \$1,200 and follow a specific counselling program both before and after his suspension as a condition of practice.

On appeal, the Benchers received a report that noted the member was making progress on his procrastination problems and that, in the opinion of his counsellor, a suspension would be counter-productive.

The Benchers overturned the suspension and ordered that:

1. the member pay costs of the discipline proceeding, not exceeding \$1,200, by November 15, 1991;
2. as a condition of practice, the member

- (a) continue the program recommended by the counsellor;
  - (b) authorize the counsellor to give monthly reports to the Law Society until the recommended program is completed;
  - (c) authorize the counsellor to report to the Law Society if the treatment program is not followed;
  - (d) continue the program until the counsellor states in writing to the Law Society that no further treatment is required;
  - (e) assume full responsibility to ensure that the program is continued, that appointments are made and kept, and that the reports are delivered to the Law Society within the specified time limits.
3. the member advise the Deputy Secretary forthwith if any of these conditions are not possible.

*Discipline Case Digest — 1992: No. 11 December (Banks)*