

2019 LSBC 23
Decision issued: July 5, 2019
Citation issued: May 9, 2016

THE LAW SOCIETY OF BRITISH COLUMBIA

In the matter of the *Legal Profession Act*, SBC 1998, c. 9

and a section 47 review concerning

DONALD FRANKLIN GURNEY

RESPONDENT

**DECISION OF THE PRESIDENT'S DESIGNATE
TO DISMISS THE REVIEW**

Written submissions: May 2, 2019

Bencher: Jeff Campbell, QC

Discipline Counsel: Sarah Conroy
No one appearing on behalf of the Respondent

BACKGROUND

- [1] The Law Society applies for an order pursuant to Rule 5-28 of the Law Society Rules that a review under s. 47 of the *Legal Profession Act* be dismissed on the basis that no steps have been taken to proceed with the review for more than six months.
- [2] The Respondent, Donald Franklin Gurney, was found to have committed professional misconduct following a hearing that took place over four days between November 2016 and January 2017. The finding of professional misconduct was based on the Respondent using his trust account to receive and disburse almost 26 million dollars on behalf of a client without making reasonable inquiries about the circumstances of the transaction, including the purpose of his retainer, and without providing any substantial legal services. He received the funds in trust via wire

transfers from offshore accounts between May and November 2013. He then purchased bank drafts made payable to the client. His fees were calculated at 0.1 per cent of the value of the funds that passed through his trust account.

- [3] The hearing panel found that there were grounds to suspect that the transactions were suspicious, and that the Respondent did not make reasonable inquiries into the source and purpose of the funds: *Law Society of BC v. Gurney*, 2017 LSBC 15.
- [4] The decision on disciplinary action was rendered on September 1, 2017. The hearing panel ordered that the Respondent be suspended from practice for a period of six months, pay \$25,845 as disgorgement of the legal fees that he had received, and comply with certain trust accounting conditions upon his return to practice: *Law Society of BC v. Gurney*, 2017 LSBC 32.
- [5] On September 26, 2017, the Respondent filed an application for a s. 47 review of both the Decision on Facts and Determination and the Disciplinary Action Decision.
- [6] On January 1, 2018, the Respondent ceased membership with the Law Society.
- [7] The Respondent has not taken any steps to advance the s. 47 review. The Respondent's former counsel, who filed the review on the Respondent's behalf, advised in February 2018 that he no longer represents the Respondent in this matter. Subsequently, the Law Society communicated directly with the Respondent, who has not responded to any of the communications from counsel for the Law Society with respect to the s. 47 review.

LEGAL FRAMEWORK

- [8] Rule 5-28 sets out the following:

Inactive reviews

- 5-28** (1) If no steps have been taken for 6 months or more, a party may apply for an order dismissing a review by delivering to the President and the other party a notice in writing that sets out the basis for the application.
- (3) If it is in the public interest and not unfair to the respondent or applicant, the President may dismiss the review.
- (4) The President may designate another Benchler to make a determination under subrule (3).

DECISION

- [9] As noted above, the Respondent filed the s. 47 review on September 26, 2017. He was required to file a review record within 60 days of filing the Notice of Review, pursuant to Rule 5-24.1. The Respondent has not filed the review record. He has not responded to any of the communications from the Law Society regarding the s. 47 review. Over 18 months have passed since the s. 47 review was filed, and the Respondent has not taken any steps to advance the review.
- [10] The Respondent has been served with notice of this application to dismiss the s. 47 review for inactivity. I am advised that there has been no response.
- [11] There is a public interest in the timely resolution of disciplinary proceedings. The Respondent has had a significant period of time to move the review forward but has not done so, and there is no indication that he intends to proceed with the review. I find that there is no unfairness to the Respondent arising from the dismissal of the review.
- [12] The application is granted, and the review is dismissed.