

2004 LSBC 29

Report issued: August 27, 2004

Oral reasons: August 24, 2004

Citation issued: February 5, 2004

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

GREGORY ALLAN SMITH

Respondent

Decision of the Hearing Panel

Hearing date: August 24, 2004

Panel: David Zacks, Q.C., Single Bencher Panel

Counsel for the Law Society: Todd Follett

Counsel for the Respondent: Jerome Ziskrout

Facts and Verdict

[1] On February 5, 2004 the Executive Director of the Law Society issued a citation (Exhibit 1) against Gregory Allan Smith (the "Respondent"). The Respondent was cited as follows:

1. You breached Law Society accounting rules as set out in the Interim Audit Report dated January 16, 2003, and, more specifically, you:

(a) failed to prepare and maintain monthly trust reconciliations in the form and content, and within the time required contrary to Rule 3-60(d) and 3-65 of the Law Society Rules; and,

(b) failed to maintain the trust accounting records necessary to enable the Law Society to properly evaluate the circumstances surrounding certain trust shortages, contrary to Law Society Rules 3-60(c)(ii).

2. With respect to your client, W, there was a trust shortage of \$7,410.89 from December 31, 2001 and October 31, 2002 and, contrary to Rule 3-66 of the Law Society Rules, you did not:

i) immediately pay enough funds into the accounts to eliminate the shortage; and,

ii) immediately report the shortage, and the circumstances surrounding it, in writing, to the Executive Director of the Law Society.

[2] Service of the citation was accepted by counsel for the Respondent on or about February 5, 2004 and Rule 4-15 of the Law Society Rules (the "Rules") was waived.

[3] The Respondent agreed to a single bencher Panel.

[4] There was an Agreed Statement of Facts dated August 24, 2004 (Exhibit 2). That Statement provides

that:

1. Gregory Allan Smith was called to the Bar of British Columbia on February 12, 1985.
2. From the time of his call Mr. Smith initially practiced as an associate with [a law firm], and then with [a law firm] initially as an associate and then as a partner. In February 1996 Mr. Smith practiced through Greg Smith Law Corporation initially with an associate working with him and currently with a partner, D.W.
3. On April 2, 2002, the Law Society received Mr. Smith's Form 47 for the period ending December 31, 2001 [Attachment #1]. The Form 47 contained 12 exceptions, including the following:

"A. During the year the law firm prepared bank reconciliations in an electronic form that could not be readily transferred to printed form after subsequent postings to the ledger had been made nor could it be determined the date of which the bank reconciliations were prepared. The client has been advised that they must prepare a monthly trust bank account reconciliation within 30 days of the month-end and retain a copy of the printed reconciliation on file.

...

D. A client pooled trust account was in overdraft in the amount of \$7,410.89 from 20 August 2001 to the present as a result of a disbursement having been made in excess of the balance of the funds in the account. The law firm has been advised to correct this error."

4. An audit of the books, records and accounts of Greg Smith Law Corporation was ordered under Rule 4-43 of the Law Society Rules on October 16, 2002. The Audit was performed by Jackie Davies of KPMG Forensic Inc. ("KPMG"). A copy of the Audit Order is attached to this Agreed Statement of Facts [Attachment #2].
5. It is agreed that Jackie Davies has the qualifications required to be permitted to give opinion evidence before a Law Society Hearing Panel regarding compliance with Part 3, Division 7 of the Law Society Rules, which govern Accounting.
6. Following the audit by KPMG, an Interim Audit Report (the "Interim Report") dated January 16, 2003 was presented to the Law Society. A copy of the narrative portion of the Interim Report is Attachment #3. Pages 6 to 10 of the Audit Report contain a summary of the findings of the audit.
7. An Addendum to the Interim Report (the "Addendum") [Attachment #4] was received by the Law Society on February 20, 2003.
8. By letter dated March 13, 2003 [Attachment #5], Mr. Smith was provided with copies of the Interim Report and Addendum. Mr. Smith was requested to explain the deficiencies revealed in the Interim Report and Addendum.
9. Mr. Smith responded by letter dated June 26, 2003 (the "Smith letter") [Attachment #6]. The Executive Summary of this letter contains the following paragraph:

"My administrative and accounting deficiencies led to numerous errors respecting the trust accounting. Although the extent of the problem is serious, I did not gain any financial advantage and no clients were harmed by my failures."
10. In paragraph 2.2 of the Smith letter, commencing on page 2, Mr. Smith explains what he refers to as the causes of the problems.

11. In paragraph 4.1.1, at page 6 of the Smith letter, Mr. Smith states:

"It is correct that monthly trust reconciliations were not prepared in a timely fashion for the months of January, and March to July 2002. This was contrary to Law Society Rule 3-65(4)."

12. In paragraph 4.1.4, at page 7 of the Smith letter, Mr. Smith acknowledges a trust shortage in the amount of \$7,410.89 with respect to his client, W. Mr. Smith explains the cause of the shortage as follows:

"On July 25th, 2001, a cheque was drawn on the trust funds in the amount of \$7,410.89 (the amount of the eventual trust shortage) payable to [N.R.]. This cheque was in payment of ongoing care being provided to the client. This transaction was incorrectly recorded in QB [QuickBooks]. The cheque should have been recorded to the account: 2520: Client Trust Liability: W.G.

The error in recording the above transaction was not detected. The result of the errors is that the account as recorded in QB still indicated that \$14,897.84 was still available to distribute.

On August 20, 2001, two further cheques were drawn on the trust account of N.R. in the combined amount of \$14,897.84. These cheques were correctly recorded. The result of these two cheques was to create a trust shortage in the amount of the initial cheque."

13. Mr. Smith did not immediately make a written report of the facts and circumstances of the shortage, described in paragraph 12, to the Executive Director of the Law Society. This was contrary to Rule 3-66(2) of the Law Society Rules.

14. Mr. Smith did not immediately pay enough funds into his trust account to eliminate the shortage described in paragraph 12. On page 7 of the Smith letter Mr. Smith states:

"The problem was detected during the Form 47 audit in early 2002. Following the trust audit we were provided with adjusting entries for our accounting. These entries were made dated December 31, 2001, as requested by the auditors. At this point the trust shortage ought to have been apparent, but I failed to appreciate there was a trust shortage...."

15. Mr. Smith acknowledges that he failed to maintain the trust accounting records necessary to enable the Law Society to properly evaluate the circumstances surrounding certain trust shortages, and that this failure was contrary to Rule 3-60(c)(ii) of the Law Society Rules.

16. On November 13, 2003, pursuant to Rule 4-13 of the Law Society Rules, the Chair of the Discipline Committee directed that a citation be issued against Mr. Smith for his conduct in failing to maintain his books and records in accordance with the Law Society Rules.

17. A copy of the citation dated February 5, 2004, and schedule is attached [Attachment #7], and was served on Jerome Ziskrout, counsel for Mr. Smith, by way of couriered mail dated February 5, 2004 [Attachment #8].

18. Mr. Smith acknowledges that he breached the Law Society Rules referred to in the schedule to the citation.

[5] As indicated in the Agreed Statement of Facts, the Respondent has admitted that he breached the Rules as described in the citation. The Panel agrees.

Penalty

[6] Earlier, I delivered my decision on the facts. The breaches of the Rules committed by the Respondent were several and, while not resulting in any loss to a client or done with any dishonest intent, not insignificant. The breaches were the result of the Respondent paying little attention to the administrative side of his practice.

[7] Lawyers like to practice law; few find the administrative side of the practice rewarding in any sense. Nevertheless, it is an important part of the practice and the Rules have been instituted to ensure that the public interest is protected.

[8] On June 26, 2003, the Respondent sent to the Law Society (see Exhibit 2, Tab 6) a detailed written explanation for the mistakes in his accounting systems and the manner in which he monitored them. He admitted his errors and provided details as to the measures that he has instituted to prevent this from re-occurring. Counsel for the Law Society described the Respondent's explanation as one of the most detailed and forthright that he has seen. I agree. I am satisfied that the Respondent now understands the requirements with which he must comply and that he will do so.

[9] Counsel for the Law Society and for the Respondent jointly submitted that the following penalty be imposed upon the Respondent pursuant to Section 38 of the *Legal Profession Act* and the Rules, that:

1. the Respondent pay a fine of \$2,000;
2. the Respondent be referred to the Practice Standards Committee to satisfy such remedial program that the Committee considers necessary to implement and to be observed and performed; and
3. the Respondent pay costs of \$7,500.

[10] I accept the proposed penalty and so order. The fine and the costs shall be paid within two months from August 24, 2004.