2006 LSBC 29
Report issued: July 20, 2006
Citations issued: February 26, 2004 and
July 21, 2004

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

Nives Emelia Racette

Respondent

Decision of the Hearing Panel on Penalty

Hearing date: June 23, 2006

Panel: James D. Vilvang, Q.C., Single Bencher Panel

Counsel for the Law Society: James A. Doyle
Appearing on her own behalf: Nives Racette

Background

[1] On July 26 2005, the Respondent admitted that she had:

> (a) failed to respond promptly or at all to communications from the Law Society, and failed to respond reasonably promptly to communications from D.M. as set out in the schedule to the first citation: and
>
> (b) failed to respond promptly to communications from the Law Society concerning the complaint of G.R., as, set out in the schedule to the second citation,

and thereby professionally misconducted herself.

[2] The facts giving rise to the second citation (which the Panel finds to be the more serious of the two matters) involved a failure by the Respondent to respond to 13 separate communications from the Law Society between July 2003 and February 2004.

[3] The Respondent had never provided a response to the complaint in the second citation until the date of the Penalty hearing, June 23, 2006, when she provided a letter (Exhibit 1) that might be considered a response. For the purpose of this decision, the Panel does not need to determine whether the letter constitutes a response. The Panel recommends that the question be referred to the Credentials Committee when, and if, they are asked to decide whether the Respondent is fit to resume practice.

[4] On September 16, 2003, the Respondent gave her undertaking not to engage in the practice of law until relieved of that undertaking by the Discipline Committee. She remains bound by her undertaking.

[5] On January 1, 2005 the Respondent became a former member as a result of non-payment of

fees.

Decision

[6] In his submissions on Penalty, counsel for the Law Society referred the Panel to numerous cases dealing with failure to respond to other lawyers and to the Law Society, as well as the *Law Society of BC v. Ogilvie* case [1999] LSBC 17, which sets out general sentencing principles. All of these authorities were considered.

[7] The Panel concludes that, in the circumstances of this case, the most important consideration is the need to " maintain the public's confidence in the ability of the disciplinary process to regulate the conduct of its members." (See *Ogilvie* (*supra*)).

[8] If the disciplinary process is to function at all, it is absolutely essential that members respond promptly to communications from the Law Society. Members must understand that failure to fulfill the duty to respond is a serious matter and that it will be dealt with accordingly. General deterrence is therefore another principle of sentencing which must be given considerable weight in this type of case.

[9] The Panel has considerable sympathy for the personal circumstances of the Respondent. As a result of these matters she has lost her right to practise law. The Respondent stated that she loves practising law and wants to return to the profession. The loss of her professional standing has been a blow to her, both personally and financially. The Panel is satisfied that specific deterrence is not an important consideration in this case. The Panel also believes that the Respondent is not in need of rehabilitation.

[10] If the Respondent were still practising, a suspension would be appropriate given the length of time that passed without a response. However, since the Respondent has been out of the practice since September 16, 2003, no suspension is required.

[11] The Panel directs that the Respondent be reprimanded.

Costs

[12] Counsel for the Law Society has submitted that the Panel should grant an order for full indemnity of costs, being $18,717.24.

[13] This Panel has previously held that any order for costs should be based on a careful consideration of all relevant factors including:

(a) the seriousness of the offence;

(b) the financial circumstances of the Respondent;

(c) the total effect of the Penalty, including possible fines and/or suspensions;

(d) the extent to which the conduct of each of the parties has resulted in costs accumulating, or conversely, being saved.

[14] Full indemnity for costs should never become " automatic" . In every case the total penalty, including costs, should " fit the crime" .

[15] In this case, the Respondent requested and was granted adjournments on four occasions. The requests were made either at the Hearing or at " the last minute" . The Respondent is therefore largely to

blame for the costs that have accrued.

[16] In the circumstances of this case, even bearing in mind the Respondent's unfortunate financial circumstances, an order for full indemnity is appropriate. This is especially so in light of the fact that no fine and no suspension has been imposed on the Respondent, even though in most cases of this kind a fine and/or suspension would have been imposed.

[17] The Panel orders that the Respondent shall pay costs in the amount of $18,717.24.

[18] The Panel further orders that the Respondent shall have until one year after her return to practice or alternatively, two years from the date of this decision, whichever shall occur first, in which to pay the costs.

[19] The Panel further orders that the Respondent shall have leave to apply for an extension of time to pay, provided the application for extension is made at least one month before the expiry of the relevant time period. This Panel is not seized of the matter of an extension application.

[20] The above orders are intended to assist in enabling the Respondent to return to the practice of law, not to deter that from happening. If this decision comes to the attention of any Committee of the Law Society that might be considering the issue of whether the Respondent should be able to return to practice, this decision should be interpreted accordingly.