

2006 LSBC 31

Report issued: August 9, 2006

Oral Reasons: July 26, 2006

Citation issued: March 10, 2005

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

Lorne Irving Smiley

Respondent

Decision of the Hearing Panel

Hearing date: July 26, 2006

Panel: Leon Getz, Q.C., Chair, Kathryn Berge, Q.C., Michael Falkins

Counsel for the Law Society: Maureen Boyd

Counsel for the Respondent: Jerome Ziskrout

Background

[1] On March 10, 2005, a citation was issued against the Respondent pursuant to the *Legal Profession Act* and Rule 4-13 of the Law Society Rules by the Executive Director of the Law Society of British Columbia pursuant to the direction of the Chair of the Discipline Committee. The citation, as amended, directed that this Panel inquire into the Respondent's conduct as follows:

1. That you, contrary to Chapter 13, Ruling 3 of the *Professional Conduct Handbook*, failed to respond promptly, or at all, to letters from the Law Society dated September 28, 2004, October 20, 2004, November 23, 2004, and December 13, 2004.
2. You failed to provide your client W.G. with the quality of service at least equal to that which would be provided by a competent lawyer in a similar situation, in that you failed to follow your client's instructions, and failed to keep your client reasonably informed of the status of the matter, contrary to Chapter 3, Ruling 3 of the *Professional Conduct Handbook*.
3. You misled your client W.G. when you advised him that you had filed tax forms with the Canada Revenue Agency when you knew that you had not done so.
4. Your further misled your client W.G. when you advised him that further delay in filing tax forms with the Canada Revenue Agency was due to your client failing to provide sufficient documentation when you knew that was not true.

[2] This citation came before this Panel as a conditional admission of a disciplinary violation and consent to a specific disciplinary action pursuant to Rule 4-22 of the Law Society Rules. The Respondent admitted that he had professionally misconducted himself and consented to the following disciplinary action:

- (a) a suspension of one month; and
- (b) costs in the amount of \$2,000.

Statement of Agreed Facts

[3] A Statement of Agreed Facts was filed. The Statement of Agreed Facts provided as follows:

1. Lorne Smiley was called to the bar on May 15, 1972 and currently practises at Smiley Hibbard MacAulay in Vancouver.
2. On or about February 28, 2003 Mr. Smiley was retained by client W.G. to file Canada Revenue Agency Form T-2062 for W.G. to report income of a non-resident for tax purposes after the sale of property.
3. Mr. Smiley failed to carry out those instructions.
4. When asked by his client W.G. whether he had filed the form, Mr. Smiley advised that he had.
5. Approximately six months after the sale of the property W.G. contacted the Canada Revenue Agency and was advised that the form had not been filed. At that point the necessary forms were filed, a clearance certificate was provided and W.G. received the sale proceeds on October 7, 2003.
6. W.G. provided a complaint to the Law Society dated September 10, 2004.
7. Ms. Gayle Myers, a staff lawyer with the Professional Conduct Department of the Law Society, wrote to Mr. Smiley on September 28, 2004, October 20, 2004, November 23, 2004 and December 13, 2004 requesting a response to the complaint filed by W.G.
8. Mr. Smiley failed to respond to the letters sent to him from Ms. Myers, and on January 13, 2005 the Discipline Committee authorized the issuance of a citation to Mr. Smiley for failing to respond to the Law Society.
9. The citation was issued on March 10, 2005.
10. Mr. Smiley admits that he received a copy of the citation within the time period specified in Rule 4-15 of the Law Society Rules. Mr. Smiley retained counsel in April 2005 and the hearing date of May 19, 2005 was adjourned to September 14, 2005 by consent. On September 8, 2005 Mr. Smiley wrote to Gayle Myers to provide a copy of a letter which he had sent to W.G. that same date. In his letter to W.G., Mr. Smiley acknowledged that he delayed in filing the tax form, " falsely indicated to you that I had filed it when I had not done so," and " foolishly and wrongly tried to lay the blame on you for not having provided me with sufficient documentation."
11. In his letter to Ms. Myers, Mr. Smiley apologized for failing to promptly respond to her reasonable requests.

12. Mr. Smiley admits that he failed to carry out the instructions of his client W.G. to file the necessary forms with the Canada Revenue Agency as instructed. Mr. Smiley further admits that he misled his client W.G. when he advised him that he had filed the tax forms with the Canada Revenue Agency when he knew that he had not done so. Mr. Smiley admits that he misled his client W.G. when he later advised him that delay in filing tax forms with the Canada Revenue Agency was due to the client failing to provide sufficient documentation when Mr. Smiley knew that that was not true. Mr. Smiley admits that his conduct in failing to provide his client W.G. with the quality of service at least equal to that which would be provided by a competent lawyer in a similar situation and in misleading his client W.G. was professional misconduct.

13. Mr. Smiley admits that he failed to respond promptly to letters from the Law Society dated September 28, 2004, October 20, 2004, November 23, 2004 and December 13, 2004 and his failure to respond was professional misconduct.

[4] After considering the circumstances set out in the Statement of Agreed Facts and having heard the submissions of counsel, the Panel accepts the admission and finds the Respondent guilty of professional misconduct.

[5] The Panel finds the penalty proposed by the Respondent, and recommended by the Discipline Committee, to be appropriate in all of the circumstances.

[6] It is accordingly ordered that the Respondent:

- (a) be suspended for one month; and
- (b) pay costs in the amount of \$2,000.

[7] The Executive Director is instructed to record the Respondent's admission on the Respondent's Professional Conduct Record, to impose the disciplinary action proposed by the Respondent and accepted by the Panel and to inform the Respondent and the complainant of the disposition.

[8] There will be publication of this decision in the normal course.