

2005 LSBC 36

Report issued: September 9, 2005

Oral Reasons: July 26, 2005

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

Hearing date: July 26, 2005

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

Counsel for the Law Society: James Doyle

Counsel for the Respondent: David Crossin, Q.C.

Background

[1] On February 26, 2004 a citation was issued against the Respondent directing an inquiry into misconduct alleged in the amended Schedule to the citation, namely:

1. That you failed to respond promptly or at all to communications from the Law Society, contrary to Chapter 13, Rule 3 of the *Professional Conduct Handbook*. These communications consisted of letters dated July 14, 2003 and August 19, 2003.
2. That you failed to respond reasonably promptly to communications from DM, a member, in April and May, 2003, which required a response from you, contrary to Chapter 11, Ruling 6 of the *Professional Conduct Handbook*.

[2] On July 21, 2004 a citation was issued against the Respondent directing an inquiry into misconduct alleged in the Schedule to the citation, namely:

1. That you failed to respond promptly to the following communications from the Law Society regarding the complaint of G.R:
 - (a) letters dated July 3, 2003, August 1, 2003, August 19, 2003, September 2, 2003, September 5, 2003, October 17, 2003, November 3, 2003, November 13, 2003, December 16, 2003, February 9, 2004, February 20, 2004, and April 1, 2004, and
 - (b) an e-mail dated February 18, 2004,

contrary to Chapter 13, Ruling 3 of the *Professional Conduct Handbook*.

[3] This second citation was amended to reflect that it had been issued on July 21, 2004, as it incorrectly noted it had been issued on February 26, 2004.

[4] Affidavits of service of both citations were filed as Exhibits #2 and #5 in these proceedings.

[5] Pursuant to Law Society Rule 5-2(2), the Respondent agreed to a Panel consisting of a single Benchler.

Admissions

[6] Counsel submitted an Agreed Statement of Fact ("ASOF") which was filed as Exhibit #8. It sets out the following:

1. Nives Emilia Racette was called to the Bar in British Columbia in 1982, and at all material times was a member of the Law Society of British Columbia (the "Respondent")

2. By letter dated September 16, 2003, the Respondent provided the following undertaking to the Discipline Committee of the Law Society:

"I, Nives Racette, undertake that I will not engage in the practice of law until I provide notice of my intention to do so in writing to the Discipline Committee and the Discipline Committee decides to either release me from my undertaking or order a show cause hearing and a show cause hearing panel determines that I should be allowed to resume the practice of law."

Complaint – Citation #1

3. By letter dated May 5, 2003, [name] ("D.M.") wrote to the Law Society setting out a summarized history of the dealings that his client, K., had with the Respondent.

4. A summary of the history provided by D.M. is as follows:

a) K retained the Respondent to incorporate a company in late 2002. They used a shelf company which had been incorporated in February 2002.

b) K provided the Respondent with post-incorporation instructions concerning the necessary documentation and also instructions to have the company's name changed to [company name]. The Respondent reserved the name [company name] with the Registrar of Companies.

c) In March and April 2003, K made numerous attempts to contact the Respondent to prompt her to complete post-incorporation work on the company. He was not successful.

d) K had entered into contracts in the company's name, opened a business which was operating in the company's name and opened a bank account for the company. He needed the company records in order to complete his application for a liquor license for the company.

e) K contacted D.M. late on April 24, 2003 and on his instructions, D.M. wrote a letter, dated April 25, 2003 and had it couriered to the Respondent on the same day.

f) In the April 25, 2003 letter sent to the Respondent, D.M. indicated that K was anxious to obtain possession of the corporate documentation for the shelf company to allow him to have control of that company. D.M. also asked that the necessary corporate documents be provided to him by April 30, 2003.

g) On April 28, 2003, the Respondent left a voicemail message with D.M., saying she had been away from her office but she was couriering the material to the company, as requested in D.M.'s letter of April 25, 2003.

h) D.M. returned the call and left a voicemail message saying that he was happy that the

Respondent was sending the material to him, but that she had not said when she would do so. He said that he needed the material no later than the deadline set, being April 30, 2003. D.M. did not receive a reply to the voicemail message.

i) On May 1, 2003, having received no further communication or material from the Respondent, D.M. left another message, reminding her that the matter was extremely urgent from K's point of view and that he required the material forthwith.

j) On May 2, 2003, D.M. received a further voicemail from the Respondent, stating that he would be receiving the corporate materials that day. The materials did not arrive that day. D.M. left two further voicemail messages on May 2, 2003 at approximately 4:00 p.m. and 5:30 p.m.

k) On May 5, 2003, D.M. left a further voicemail informing the Respondent that he was in the process of reporting the matter to the Law Society.

5. Regarding the history provided by D.M., the Respondent states that additional work was completed by the Respondent in accordance with K's instructions. For example, the Respondent reviewed a draft Letter of Intent regarding an asset purchase and prepared additions documents such as a Convertible Loan Agreement and Promissory Note.

6. With respect to paragraph 4(d) above, the Respondent does not agree with all of the facts provided by K to D.M.

7. With respect to the history of D.M.'s communications with the Respondent concerning the delivery of corporate documents, set out in paragraph 4 above, the Respondent recalls that in or around the time of her communications with D.M. she was contacted by [name] ("C.M.") on K's behalf and given instructions that C.M. would pick up the corporate documents for K. The Respondent recalls attempting to contact D.M. to seek clarification of K's instructions concerning the delivery of the corporate documents.

8. By letter dated May 7, 2003, Gayle Myers, Staff Lawyer – Professional Conduct, with the Law Society, wrote to the Respondent enclosing a copy of D.M.'s letter of May 5, 2003, and asking that the Respondent contact her immediately.

9. On May 8, 2003 Ms. Myers and the Respondent had a telephone conversation. At that time, the Respondent provided some background as to personal issues she was facing, and she said that D.M. could be in touch with her concerning arrangements for her to provide him with the documents.

10. Lynne Knights at the Law Society called D.M. and left a message on May 9, 2003 indicating that he should call the Respondent and set up a time to meet to gather the documents. Ms. Knights then left a message for the Respondent advising that she had given the Respondent's number to D.M. and that they should arrange a time and a place to meet.

11. Gayle Myers spoke to D.M. on May 12, 2003. D.M. indicated that he had not heard from the Respondent on the previous Friday (May 9, 2003). He had received a voicemail from her at 6:30 on the morning of May 12, 2003, indicating that she would be bringing the material that day.

12. Gayle Myers left a message for the Respondent on May 12, 2003 indicating that if the Respondent did not call her that day, the Law Society would have to take disciplinary action.

13. Gayle Myers spoke to D.M. on May 13, 2003. He confirmed that the Respondent did show up that day with the necessary documentation.

14. By letter dated May 15, 2003, Gayle Myers wrote to the Respondent, indicating that she still required a written response explaining the circumstances that gave rise to the complaint. She posed certain specific questions.
15. By letter dated May 22, 2003, Gayle Myers wrote to the Respondent requesting a response to her May 15, 2003 correspondence.
16. By letter dated June 5, 2003, Gayle Myers wrote to the Respondent seeking a response to her letters of May 15 and May 22, 2003.
17. On June 17, 2003, Michelle Boren, Gayle Myers' assistant, left a voicemail message with the Respondent advising her to fax in her response to Ms. Myers requests.
18. Later on June 17, 2003, Gayle Myers spoke to the Respondent. She indicated she had been in Mexico on a holiday and was not able to respond, but that she would respond now.
19. By letter dated June 17, 2003, Gayle Myers wrote to the Respondent indicating that, based on her review of the file, she would be referring the matter to the Discipline Committee.
20. On July 7, 2003, Gayle Myers spoke to the Respondent, at which time the Respondent indicated she would respond to D.M.'s complaint and that she had drafted a response. She also indicated that she was under quite a bit of stress and provided information concerning her husband and various matrimonial issues.
21. By letter dated July 9, 2003, the Respondent faxed Gayle Myers a one-page handwritten letter with a two-page attachment, being a July 8, 2003 letter addressed to the Law Society of British Columbia.
22. By letter dated July 14, 2003, Gayle Myers wrote to the Respondent, indicating that the Discipline Committee had deferred consideration of the matter until their September meeting, and at the same time, Ms. Myers sought certain information.
23. The Respondent left a telephone message on July 31, 2003. The Respondent indicated that she had been away and wanted an extension for one week, as she was collecting the material and would get the information to Gayle Myers.
24. Gayle Myers had a telephone conversation with the Respondent on August 5, 2003, saying that she would provide an extension to August 18, 2003 to provide the information.
25. By letter dated August 6, 2003, Gayle Myers wrote to the Respondent indicating that an extension had been granted until August 18, 2003.
26. By letter dated August 19, 2003, Gayle Myers wrote to the Respondent requesting a reply to her letter of July 14, 2003 and indicating that she would appreciate receiving a response within two weeks of the date of August 19, 2003.
27. The Respondent left a voicemail message with Gayle Myers on August 19, 2003, saying that she had signed the Authorization for Medical Information and was going to drop it off in person at the Law Society offices. Since she did not say she was trying to get the balance of the information from the July 14, 2003 requests, Ms. Myers called the Respondent and left a message for her.
28. By letter dated September 2, 2003, Gayle Myers wrote to the Respondent indicating the matter was being placed before the Discipline Committee for its September meeting to request that the matter be deferred to October 2003, to provide time to obtain the information requested previously. She also indicated the Discipline Committee may elect to take further action with respect to the Respondent's

failure to respond to the Law Society communications.

29. On September 4, 2003, Gayle Myers received a telephone call from Jerry Ziskrout ("J.Z."), a member of the Law Society, indicating that he had just been retained, and that he wanted the matter deferred one month to get information.

30. By a telephone call on September 5, 2003 and subsequent letter dated September 5, 2003, Gayle Myers wrote to J.Z., noting that there were two outstanding complaints concerning the Respondent. She also indicated that the Discipline Committee agreed to defer the matter until their next meeting in October and also that there would not be a Section 39 Hearing with respect to the Respondent's fitness to practice, if she immediately provided a written undertaking not to practice law until the matter was dealt with by the Discipline Committee.

31. By letter dated September 16, 2003, J.Z. wrote to Gayle Myers enclosing a copy of the Respondent's signed undertaking not to engage in the practice of law, as well as her signed Medical Authorization.

32. By letter dated September 17, 2003, Gayle Myers wrote to J.Z., indicating that the matter would be placed before the Discipline Committee at its next meeting of October 2, 2003, at which time Ms. Myers would request a deferral until the information requested in her July 14, 2003 letter to the Respondent had been provided and medical information had been obtained from the Respondent's doctor.

33. By letter dated October 7, 2003, Gayle Myers wrote to J.Z. indicating the Discipline Committee had deferred the matter for consideration until its December meeting.

34. By letter dated October 17, 2003, Gayle Myers wrote to J.Z. requesting a reply to her letter of September 5, 2003.

35. By letter dated November 3, 2003, Gayle Myers wrote to J.Z. requesting a response to her letters of September 5 and October 17, 2003.

36. An articulated student at J.Z.'s office wrote to Ms. Myers on November 6, 2003, indicating that they were unable to provide a written response, because they had not yet succeeded in meeting with the Respondent.

37. By letter dated November 13, 2003, Gayle Myers wrote to J.Z., indicating that she expected to bring the matter before the Discipline Committee at their December meeting, concerning the other complaint.

38. Gayle Myers spoke to J.Z. on November 17, 2003. J.Z. indicated that he had not heard from his client, and also indicating that he was not aware of any files that the Law Society ought to be concerned about and that his client had assured him that there were none.

39. J.Z. followed up with a letter of November 18, 2003, outlining the conversation from the previous day.

40. By letter dated December 17, 2003, Mr. Matkin, Q.C. of the Law Society, wrote to J.Z., indicating that the Discipline Committee had reviewed the matter concerning D.M.'s complaint and it was the decision of the Committee to recommend to the Chair of the Discipline Committee that there be a direction to issue a Citation against the Respondent, and the Chair so directed.

Complaint – Citation #2

41. By an undated letter, received by the Law Society on June 6, 2003, the Respondent's husband,

... By an undated letter, received by the Law Society, on June 9, 2003, the Respondent's husband, from whom she was separated, wrote a letter of complaint ("the Complainant").

42. By letter dated July 3, 2003, Gayle Myers wrote to the Respondent enclosing various documents containing allegations made by the Complainant. Ms. Myers sought information to assist in responding to the Complainant and asked for a response within four weeks of the date of the letter.

43. Ms. Myers wrote a reminder letter on August 1, 2003.

44. The Respondent called Gayle Myers on August 5, 2003 and asked for an extension to August 18, 2003, which was agreed and confirmed in writing on August 6, 2003.

45. Reminders were sent to the Respondent on August 19, 2003 and September 2, 2003.

46. On September 4, 2003, J.Z., a member of the Law Society, called Gayle Myers to advise that he had been retained to represent the Respondent.

47. In a telephone conversation on September 5, 2003 and a letter also dated September 5, 2003, Gayle Myers wrote to J.Z., outlining the complaint and seeking a response.

48. By letter dated September 16, 2003, J.Z. provided the Respondent's undertaking (see paragraph 2) and a medical authorization signed by the Respondent.

49. Reminder letters were sent to J.Z. on October 17, 2003 and November 3, 2003.

50. On November 6, 2003, an articled student at J.Z.'s office wrote to advise that they had not been able to provide a response, as they had not been able to meet with the Respondent.

51. A further reminder was sent to J.Z. on November 13, 2003.

52. Gayle Myers spoke to J.Z. on November 17, 2003. J.Z. indicated he had not heard from the Respondent.

53. J.Z. wrote on November 18, 2003 with respect to certain files, but did not address the substantive complaints.

54. On December 5, 2003, J.Z. left a voicemail message with Gayle Myers saying he would be away on vacation. He said that he had heard from the Respondent and that she had been away at a trial.

55. Gayle Myers followed with an email to the Respondent, copied to J.Z.'s office, outlining the voicemail message J.Z. had left on December 5, 2003.

56. Gayle Myers wrote to J.Z. on December 16, 2003 asking when a response would be received from the Respondent.

57. Later in December 2003, J.Z. advised that he was no longer retained by the Respondent.

58. Ms. Myers wrote to the Respondent on February 2, 2004 but the letter was returned, indicating that the Respondent had moved from her former address.

59. The letter was redelivered on February 9, 2004 requesting a response within ten days.

60. By letter dated February 16, 2004, the Respondent wrote to the Law Society concerning accounting issues and said that her goal was to address all concerns with the Law Society and resume the practice of law.

61. On February 18, 2004, the Respondent called Gayle Myers and said she wanted some time to respond. She said she had been away sick, was getting divorced and had to deal with an eight day

divorce trial on her own. Ms. Myers indicated she had to respond by March 5, 2004.

62. Ms. Myers followed with an email to the Respondent, also on February 18, 2004, confirming she required a response by March 5, 2004.

63. By letter dated February 20, 2004, Gayle Myers wrote confirming she required a response by March 5, 2004.

64. On March 8, 2004, the Respondent called Ms. Myers and advised that she was trying to get a lawyer to review her response and the response would be on its way soon.

65. Gayle Myers wrote on April 1, 2004, advising that the matter was being referred to the Discipline Committee because of her failure to respond.

66. By letter dated May 10, 2004, Stuart Cameron, Director of Regulation, at the Law Society, wrote to the Respondent indicating it was the decision of the Discipline Committee to recommend to the Chair of the Discipline Committee that there be a direction to issue a Citation against the Respondent, and the Chair so directed.

[7] The Respondent admits that she 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 that that conduct constitutes professional misconduct.

[8] The Respondent admits that she failed to respond promptly to communications from the Law Society concerning the complaint of G.R., as set out the Schedule to the second citation, and that that conduct constitutes professional misconduct.

[9] The Panel accepts the admissions and finds the Respondent guilty of professional misconduct.