

2006 : No. 4 September-October

Nives Emelia Racette

Richmond, BC

Called to the bar: July 13, 1982

Ceased membership: January 1, 2005

Undertook not to practise law: September 16, 2003

Discipline hearing : July 26, 2005 and June 23, 2006

Panel : James D. Vilvang, QC, as a single-Bencher panel by consent

Reports issued : September 9, 2005 (indexed as 2005 LSBC 36) and July 20, 2006 (indexed as 2006 LSBC 29)

Counsel : James Doyle for the Law Society; David Crossin, QC for Ms. Racette and Ms. Racette on her own behalf

Facts

Ms. Racette represented K in the incorporation of a company in late 2002. K provided her with post-incorporation instructions, including instructions to have the company's name changed. Ms. Racette reserved the desired name with the Registrar of Companies.

According to testimony from DM, a lawyer who later represented K, K made several unsuccessful attempts to contact Ms. Racette in March and April 2003. K wanted her to complete the post-incorporation work because, among other reasons, he had already entered into contracts in the company's name.

On April 24, 2003, K contacted DM. DM sent a letter to Ms. Racette the next day and asked for the corporate documents to be provided to him by the end of the month. Ms. Racette called DM on one occasion saying she would courier the material, but she did not do so by April 30, 2003, as DM had requested. On May 1, DM left a telephone message indicating that K considered the matter urgent and that DM required the material immediately. The next day, Ms. Racette left DM a voicemail saying he could expect the materials that day. They did not arrive. On May 5, 2003, DM left a voicemail informing Ms. Racette he was reporting the matter to the Law Society.

Ms. Racette did not agree with all the facts as described to DM by K. Ms. Racette said she did, in fact, complete additional work in accordance with K's instructions.

The Law Society wrote to Ms. Racette on May 7, 2003 regarding DM's complaint. The next day, Ms. Racette had a telephone conversation with Law Society staff and provided some background regarding difficulties in her personal life. Ms. Racette delivered the documents to DM on May 13, 2003.

On May 15, 2003 the Law Society wrote to Ms. Racette advising a written response to the circumstances that gave rise to the complaint was still required. In a telephone conversation with Law Society staff, Ms. Racette indicated she was under stress because of various matrimonial issues with her husband. A staff lawyer wrote several more letters regarding DM's complaint, which went unanswered by Ms. Racette until July 9, 2003.

On June 6, 2003, Ms. Racette's husband, from whom she was separated, wrote a letter of complaint to the Law Society. The Law Society wrote to Ms. Racette on July 3, 2003 about the complaint. There were 13 separate communications from the Law Society between July 2003 and February 2004 regarding his

complaint. Ms. Racette did not respond to any of them.

In September 2003, Ms. Racette retained a lawyer. At the request of the Law Society, Ms. Racette provided an undertaking on September 16, 2003 not to engage in the practice of law until the Discipline Committee either released her from her undertaking or a hearing panel determined she should be allowed to resume practising. On more than one occasion, her lawyer was unable to respond to Law Society communications because he had not succeeded in meeting with Ms. Racette. In December 2003, her lawyer told the Law Society that Ms. Racette no longer retained him.

Verdict

The hearing panel found Ms. Racette guilty of professional misconduct for her failure to respond promptly, or at all, to communications from the Law Society regarding the two complaints, and her failure to respond reasonably promptly to communications from DM. Ms. Racette admitted her conduct constituted professional misconduct.

Penalty

The hearing panel said it found Ms. Racette's failure to respond to the Law Society regarding the complaint by her husband, whom she later divorced, to be the most serious. It emphasized the fact that Ms. Racette did not respond to any of the 13 separate communications from the Law Society regarding this complaint. In addition, she did not respond to the complaint until the date of the penalty hearing, when she provided a letter that the panel determined might be considered a response.

The panel expressed considerable sympathy for the personal circumstances of Ms. Racette. It also stressed the importance of the need to maintain public confidence in the Law Society's ability to regulate its members. Therefore, it stated members must understand that failure to fulfil the duty to respond is a serious matter and will be dealt with accordingly.

The panel noted Ms. Racette had ceased to be a member in January 2005 as a result of non-payment of fees, and were she still practising, a suspension would have been appropriate for the length of time it took Ms. Racette to respond to the Law Society's correspondence.

With regard to costs, the panel noted that full indemnity on the part of the cited lawyer should never be automatic. In this case, Ms. Racette requested and was granted adjournments on four occasions, and the requests came either at the hearing or at the last minute. As a result, the panel found Ms. Racette was largely to blame for the accrued costs, and it ordered she should fully indemnify the Law Society for costs. The panel provided that Ms. Racette would have leave to apply within a prescribed period of time for an extension of time to pay.

The hearing panel accordingly ordered that Ms. Racette:

1. be reprimanded; and
2. pay costs of \$18,717.24.