

2007 LSBC 01

Report issued: January 04, 2007

Citation issued: October 16, 2006

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

Hugh Braker, Q.C.

Respondent

**Decision of the Hearing Panel
on Facts and Verdict**

Hearing date: December 6, 2006

Panel: William Jackson, Chair, Bruce LeRose, David Renwick

Counsel for the Law Society: Maureen Boyd

Appearing on his own behalf: Hugh Braker, Q.C.

Background

[1] On October 16 2006, 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 at the hearing of this matter, directed that this Panel inquire into the Respondent's conduct as follows:

1. You failed to respond promptly or at all to letters from the Law Society dated February 14, 2006, March 7, 2006, March 21, 2006, April 4, 2006, June 13, 2006, June 27, 2006 and July 12, 2006 with respect to a complaint by your clients J.C. and J.C. Jr., contrary to Chapter 13, Rule 3 of the *Professional Conduct Handbook*.
2. You failed to respond reasonably promptly or at all to communications from another lawyer, C.B., which required a response, being a letter dated November 30, 2005, contrary to Chapter 11, Rule 6 of the *Professional Conduct Handbook*.

[2] The requirements for service of this citation upon the Respondent, pursuant to Rule 4-15, were admitted by the Respondent.

Statement of Agreed Facts

[3] Counsel submitted an Statement of Agreed Facts, which was filed as Exhibit 4. The Statement of Agreed Facts set out the following.

1. On May 10, 1984, the Respondent was admitted to the Bar of British Columbia.

2. From his admission until July 7, 1986, the Respondent practised as a sole practitioner, except for a six month period between December 31, 1984 and June 7, 1985, when he was a ceased member. Between July 7, 1986 and December 1, 1994, the Respondent was employed by the Nuu-Cha-Nulth Tribal Council and from December 14, 1989 has also practised under the name of Braker & Company.
3. The Respondent was retained by J.C and J.C. Jr. (the " Clients") in connection with a personal injury claim. In or about November, 2005, the Clients became dissatisfied with the service provided by the Respondent and retained new counsel, Mr. B.
4. On November 16, 2005, Mr. B. faxed to the Respondent a letter in which he advised that he had been consulted by the Clients and requested that the Respondent advise him " ... whether or not their claims have been settled and, if so, what proceeds they can expect from their claims."
5. On November 18, 2005, Mr. B. faxed to the Respondent a further letter setting out his understanding that the Clients' claim had been dismissed for want of prosecution and the Clients had not received notice of the application. Mr. B. requested that the Respondent " ...advise what steps your firm is taking to remedy the Order dismissing the action for want of prosecution."
6. On November 30, 2005, Mr. B. wrote to the Respondent to advise that he was retained to represent the Clients and requested " that you forward your file to this office as soon as possible." Mr. B. also undertook to pay the Respondent's outstanding disbursements and taxes upon receipt of the file and to protect his fees, subject to taxation.
7. The Respondent did not reply to any of the letters of Mr. B. nor did he forward the Clients' file to Mr. B.
8. On February 7, 2006, the Clients filed a complaint (the " Complaint") with the Law Society.
9. On February 13, 2006, Gurprit Gill, Professional Conduct Staff lawyer, spoke by telephone with the Respondent about the Complaint, in which conversation the Respondent denied having received any letter from Mr. B. indicating he was retained.
10. By letter dated February 14, 2006 from Ms. Gill, the Law Society requested a response from the Respondent to the Complaint.
11. On each of March 7, 2006 and March 21, 2006, Ms. Gill sent follow-up letters to the Respondent requiring a response from him with respect to the Complaint. There was no response from Mr. Braker.
12. On April 7, 2006, Ms. Gill telephoned the Respondent and spoke with him. He told her that he saw a doctor two days after receiving her letter with respect to a medical condition and was scheduled for surgery on an urgent basis on April 18, 2006, with an estimated four week recovery period. Ms. Gill confirmed this conversation by letter dated April 24, 2006, and extended the time for a response from the Respondent to May 29, 2006.

13. On May 29 and 30, 2006, Ms. Gill attempted to contact the Respondent by telephone as she had not received any response from him. On May 31, 2006, the Respondent, by faxed letter, advised the Law Society that he had returned to work full-time and he would " have a letter to you next week in answer to your enquiry on the [Complaint]."

14. On June 13, 2006, Ms. Gill wrote to the Respondent requesting a response within two weeks.

15. On each of June 27, 2006, and July 12, 2006, Ms. Gill again wrote to the Respondent to request a response to the Complaint, as originally requested in her letter of February 14, 2006. There was no response from Mr. Braker.

16. To date the Respondent has not provided to Mr. B. the Client's file.

17. To date the Respondent has not provided a substantive response to the Law Society with respect to the Complaint.

18. The Respondent admits that his conduct in failing to respond promptly to letters from the Law Society dated February 14, 2006, March 7, 2006, March 21, 2006, April 4, 2006, June 13, 2006, June 27, 2006 and July 12, 2006 contrary to Chapter 13, Rule 3 of the *Professional Conduct Handbook*, is professional misconduct.

19. The Respondent admits that his failure to respond reasonably promptly or at all to a letter from Mr. B. dated November 30, 2005, that required a response, is contrary to Chapter 11, Rule 6 of the *Professional Conduct Handbook* and is professional misconduct.

20. The Respondent admits that he was served with a true copy of the citation in accordance with Rule 4-15 of the Law Society Rules.

[4] The Panel accepts the admission by the Respondent that his conduct described in the citation amounted to professional misconduct.

[5] The Penalty phase of the hearing was put over to a date to be agreed between counsel.