

2007 LSBC 16

Report issued: April 4, 2007

Citation issued: June 28, 2006

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

## **Vance Goulding**

Respondent

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

Hearing date: March 14 and 15, 2007

Panel: G. Glen Ridgway, Q.C., Chair, William Jackson, Bruce A. LeRose, Q.C.

Counsel for the Law Society: Maureen Boyd

No-one appearing on behalf of the Respondent

## **Background**

[1] On June 28, 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. This citation was amended pursuant to Rule 4-31(2)(a) on October 17, 2006, and further amended March 14, 2007 pursuant to Rule 4-31(2)(b). The citation directs that this Hearing Panel inquire into the Respondent's conduct as follows:

1. You failed to respond promptly to the following communications from the Law Society seeking your response to a complaint by a client, H.R.:

(a) Letters dated October 11, 2005, October 31, 2005, January 20, 2006, February 3, 2006, March 7, 2006; and

(b) an e-mail message on January 3, 2006,

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

2. You failed to respond promptly to the following communications from the Law Society seeking to schedule the Conduct Review ordered by the Discipline Committee on November 9, 2005:

(a) Letter dated February 9, 2006;

(b) an e-mail message on March 21, 2006,

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

3. You failed to answer inquiries and provide practice reviewers with information, files and records in your possession as reasonably requested by them, contrary to Rule 3-13(4) of the Law Society Rules.

4. You failed to serve your client H.R. in a conscientious, diligent and efficient manner so as to provide a quality of service at least equal to that which would be expected of a competent lawyer in a similar situation, in that you failed to keep your client reasonably informed about the status of the matter, failed to answer reasonable requests from the client for information, and failed to respond when necessary to your client's telephone calls and correspondence, contrary to Chapter 3, Rule 3 of the *Professional Conduct Handbook*.

5. You misappropriated funds received by you from your client H.R. in trust, in your capacity as a barrister and solicitor, in that in or about each of July 2004 and December 2004 you negotiated the client's cheques and received the funds in cash when you were not entitled to do so.

6. In respect of funds in the amount of \$3,050 (the "Funds" ) received in trust from your client H.R. in or about July 2004 and December 2004, you failed to handle those Funds in accordance with Part 3, Division 7 of the Law Society Rules, and in particular,

(a) you did not deposit the Funds to a trust account, contrary to Rule 3-51 of the Law Society Rules;

(b) you withdrew the Funds from trust when you had not prepared or delivered a bill to your client H.R., contrary to Rule 3-57(1) of the Law Society Rules; and

(c) you failed to record each trust or general transaction related to the Funds promptly or at all, contrary to Rule 3-63 of the Law Society Rules.

[2] At the commencement of the hearing, Law Society counsel was present but the Respondent was not. Counsel for the Law Society went on, at length, to establish that the Respondent had been served with the citation, notice of this hearing date and all other disclosure. The materials in proof of service are marked as Exhibit 1.

[3] Fifty minutes after the commencement of the Hearing and still without the presence of the Respondent, the Panel proceeded in his absence to consider the matters set out in the citation, as is permitted by Section 42 of the *Legal Profession Act*.

[4] The standards of proof required in this matter is as set out in *Law Society of BC v. Harder*, 2005 LSBC 48, which holds that:

The jurisprudence on this subject makes it abundantly clear that the standard of proof will vary according to the gravity of the consequences. Where a professional's reputation is at stake and the consequences of an adverse finding are significant or severe, the burden of proof to be met must be substantially higher than in those circumstances where no such adverse consequences are

anticipated.

[5] Accordingly, we adopt the position that, in this matter, a high standard of proof, very close to the criminal standard, is required, particularly with respect to count 5 on the amended Schedule.

[6] With respect to the determination of whether the conduct alleged amounts to professional misconduct, we note that it is well established that it is for the Benchers to determine behaviour that amounts to professional misconduct. We also note that the decision of *Law Society of BC v. Martin*, 2005 LSBC 16 holds that the appropriate test to be applied is as follows:

[171] The test that this Panel finds is appropriate is whether the facts as made out disclose a marked departure from that conduct the Law Society expects of its members; if so, it is professional misconduct.

### **Counts 1 to 3 - Failure to Respond to the Law Society**

[7] The essence of each of the first three counts is a failure to respond to the Law Society over a period of five months concerning a complaint by a client, H.R. and the scheduling of a Conduct Review and to cooperate with a Practice Review.

[8] Chapter 13, Rule 3 of the *Professional Conduct Handbook* stipulates that a lawyer " must reply promptly to any communication from the Law Society." This obligation to respond is fundamental to the Law Society's ability to govern its members and protect the public interest as confirmed in *Law Society of BC v. Dobbin*, [1999] LSBC 27.

[9] The evidence in this hearing discloses a persistent pattern of failure to respond to communications from the Law Society. From November 9, 2005 to April 6, 2006 the Law Society attempted to contact the Respondent by means of 11 letters, three e-mails and several voice mails. The evidence of Ruth Long, staff lawyer at the Law Society, was that she repeatedly " exhorted" the Respondent to contact his client H.R. to get the matter on track. It was H.R.'s evidence that, despite her many attempts to contact the Respondent, her last communication with him was on or about December 28, 2004.

[10] Respecting count 2, Kathy Copak of the Law Society gave evidence that she wrote to the Respondent on February 9, 2006 and March 3, 2006, to attempt to arrange a Conduct Review. The only response was an e-mail dated March 2, 2006 from the Respondent advising that he would contact Ms. Copak about the Conduct Review the following week. He never did so.

[11] Concerning count 3 on the Schedule to citation, concerning a Practice Review, Rule 3-13(4) stipulates that:

A lawyer whose practice is being reviewed under subrule (1) must answer any inquiries and provide the practice reviewers with any information, files or records in the lawyer's possession or power as reasonably requested.

[12] Kensi Gounden, staff lawyer with the Law Society, testified that he wrote the Respondent on December 15, 2005 requesting an authorization for release of LIF claims information and the completion of a Practice Review Checklist. Having received no reply, he repeated the request in a letter dated January 13, 2006. After speaking to the Respondent on the telephone on January 13, 2006, a Practice Review was agreed to for March 8, 2006. On the same date a third request was made for the return of the Checklist and authorization. Neither was ever received.

[13] By an e-mail dated March 6, 2006, the Respondent requested an adjournment of the Practice Review of March 8. However, he subsequently failed to contact the Law Society to arrange a new date for the Practice Review, and by letter dated March 13, 2006, the Practice Review was unilaterally reset for March 22, 2006. The Respondent did not attend his office on March 22, 2006 for the Practice Review.

[14] We find that counts 1, 2 and 3 of the Schedule to citation have been proven and that the Respondent professionally misconducted himself in respect of each of the three counts.

### **Counts 4 to 6 - The H.R. Complaint**

[15] These allegations arise from a retainer the Respondent accepted on July 31, 2004 to act for H.R. in respect of her application to sponsor her husband as an immigrant to Canada. H.R. testified that, on or about July 31, 2004, she paid the Respondent \$1,550 by a cheque dated August 15, 2004. The sum of \$550 was for filing fees with the Department of Immigration. On December 15, 2004 H.R. met with the Respondent again and paid him a further \$1,500 by cheque. H.R.'s evidence is corroborated by photocopies of the cancelled cheques and a receipt on the letterhead of the Respondent.

[16] H.R. further testified that she had obtained the necessary documents and completed forms from Iran in early January, 2005 and that these materials were sent by Express Post to the Respondent at his office in Vancouver. This packet was found unopened by the Law Society investigator in the Respondent's office on August 31, 2006, when the practice was being put into custodianship.

[17] H.R. testified that she never received a bill from the Respondent, and when his office was searched by Paul Willms, the Law Society investigator, no bill was found. It was further confirmed by Mr. Willms that no application had ever been made as per the instructions of H.R. to the Respondent.

[18] With specific reference to count 4, the test for what constitutes a conscientious, diligent and efficient manner of service is set out in Chapter 3, Rule 3 of the *Professional Conduct Handbook*. Concerning the matter before this Panel, the measure of quality of service listed in Rule 3 that are most germane are:

... the extent to which the lawyer:

- (a) keeps the client reasonably informed,
- (b) answers reasonable requests from the client for information,
- (c) responds, when necessary, to the client's telephone calls,
- (g) does the work in hand in a prompt manner so that its value to the client is not diminished or lost,

[19] This Panel finds that there was a period of delay and inactivity from January, 2005 until the Respondent undertook at a proceeding pursuant to Section 39 of the *Legal Profession Act* on June 23, 2006 not to practise law. We further find that the Respondent failed to meet any of the four measures of competent service enumerated in the paragraph immediately above. Accordingly, in the result we find that count 4 of the Schedule to citation has been proven and that the Respondent professionally misconducted himself.

[20] With respect to count 5, what constitutes "misappropriation" was considered in *Law Society of BC v. Andres-Auger*, 1994 L.S.D.D. #127. At page 30 of that decision, the Panel stated that:

" Misappropriation" or " wrongfully converting money" at least requires proof of the appropriation being wrongful, and means more than merely receiving money to which you are not entitled. There must be some mental element amounting to wrong doing. ... It will in every case depend upon the circumstances.

[21] The definition of misappropriation was further clarified in *Law Society of BC v. Harder*, 2005 LSBC 48. In paragraph [56] the Panel adopted an American line of reasoning that said:

" ... knowing misappropriation consists simply of a lawyer taking a client's money entrusted to him, knowing that it is the client's money and knowing that the client has not authorized the taking" [...]. The lawyer's subjective intent to borrow or steal, the pressures on the lawyer leading him to take the money, the presence of the attorney's good character and fitness and absence of " dishonesty, venality, or immorality" are all irrelevant.

[22] Paul Willms testified that the Respondent had no trust account as per his filed Form 47. Further, on June 28, 2006 the Respondent advised Mr. Willms that he took no retainers and did everything on a " work first, then bill" basis. The Panel finds that is not what happened here, as the monies of H.R. were paid in advance of most, if not all, work on the file being done by the Respondent.

[23] The Panel finds on the evidence that the money from H.R. was never placed in a trust account, that no account was ever rendered, that no filing fee was ever paid to the Department of Immigration, and the monies paid to the Respondent were converted to his own use.

[24] With respect to count 6, the applicable rules are Rule 3-51, which requires a lawyer to deposit funds received in trust into a trust account as soon as practicable, Rule 3-57(2), which requires a lawyer to first prepare a bill and immediately deliver it to the client, and Rule 3-63, which requires that a lawyer must record each trust and general transaction promptly.

[25] Through the testimony of H.R the two cheques she gave the Respondent were entered as Exhibits 6 and 7. The reverse sides of those two cheques show that they were cashed at Money Mart. H.R. said she never received a bill, and Mr. Willms testified the Respondent's Form 47 showed no trust account for the relevant time period, and no bill was found in his records. In fact, Mr. Willms found no accounting records.

[26] In the result we find that count 6 of the Schedule to citation has been proven and that the Respondent professionally misconducted himself.