

2007 LSBC 31

Report issued: June 11, 2007

Oral Reasons: April 18, 2007

Citation issued: February 19, 2007

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

Michael Zsolt Galambos

Respondent

Decision of the Hearing Panel

Hearing date: April 18, 2007

Panel: Gordon Turriff, Q.C., Chair, Joost Blom, Q.C., Robert McDiarmid, Q.C.

Counsel for the Law Society: Maureen Boyd

Counsel for the Respondent: Jerome Ziskrout

Background

[1] On February 19, 2007, 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 directed that this Panel inquire into the Respondent's conduct as follows:

1. Your conduct on February 17, 2006, when you represented to Master Barber in Supreme Court Chambers that a notice of motion had been served on the defendant in the action *C v. C*, when it had not been served, which representation had the effect of misleading the court.

[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 a Statement of Agreed Facts, which set out the following.

1. On May 17, 1991, the Respondent was admitted to the Bar of British Columbia.

2. On or about February 15, 2006, colleagues in the office in which the Respondent worked were preparing an application for short leave (the "Short Leave Application") in respect of an application in a matrimonial action (the "Action"), in which the plaintiff was seeking an order to move with the children of the marriage to a different location within the province.

3. The Respondent was aware that there was discussion in the office regarding whether for the

Short Leave Application it was necessary to serve the defendant in the Action with only the Writ and Statement of Claim, or whether the Notice of Motion and supporting affidavit had to also be served.

4. On February 15, 2006 the Writ and Statement of Claim were served on the defendant in the Action. The Notice of Motion and supporting affidavit were not served.

5. The Short Leave Application was set for hearing on February 17, 2006.

6. On or about February 16, 2006, the Respondent agreed to attend court to speak to the Short Leave Application.

7. On February 17, 2006, prior to leaving the office for court, the Respondent asked a legal secretary in the office if the defendant in the Action had been served. She responded that the defendant had been served but the process server had not yet provided an affidavit of service. The Respondent did not ask which documents had been served upon the defendant.

8. On February 17, 2006, the Respondent attended before Master Barber in Chambers in the Supreme Court of British Columbia in Vancouver, B.C. to speak to the Short Leave Application. The Respondent was accompanied to court by a junior associate in the firm, Ms. B., who attended to watch the Short Leave Application.

9. During the Respondent's submissions in the Short Leave Application, the Master asked " He's been served with the writ and statement of claim, plus the motion?" , to which the Respondent responded " Plus the motion on Wednesday" (the " Representation").

10. At the time the Respondent made this Representation in Court:

(a) the Notice of Motion and supporting affidavit had not been served on the defendant in the Action;

(b) the Respondent did not know whether the Notice of Motion and supporting affidavit had been served on the defendant in the Action; and

(c) he knew he was misleading the Court.

11. The Master granted the Short Leave Application.

12. Immediately after the Short Leave Application, Ms. B advised the Respondent that the Notice of Motion and affidavit had not been served.

13. The Respondent did not return to Court to advise that his Representation was not accurate.

14. The Respondent admits that his conduct on February 17, 2006 in representing to the Master in Supreme Court Chambers that a Notice of Motion had been served on the defendant in the Action, when it had not been served, had the effect of misleading the Court and is professional misconduct.

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

Penalty

[5] The Panel begins by thanking counsel for their very helpful submissions.

[6] We have canvassed the range of penalties in the authorities to which counsel for the Law Society has referred, and there is indeed a somewhat perplexing range. Nonetheless, in the case under consideration, the governing factor, in our view, is that this is a serious matter. The court must be able to accept statements of counsel without having to make inquiry. And indeed, when counsel, having discovered that he or she has made a misrepresentation (and there is no alternative) must inform the court of the incorrect statement that had been made. That seems to us to be an aggravating factor here.

[7] This is, in our view, a case that calls for something more than a fine. We agree with the submission made by counsel for the Law Society that this kind of case calls for something that will be regarded by members of the public as more than a cost of doing business.

[8] In the result, the Panel orders that the Respondent:

1. be suspended for one month from August 1st through August 31st, 2007; and
2. by October 31, 2008, pay the costs of these proceedings in the amount of \$3,000.00.

[9] Although we have not ordered him to do so as part of the imposed penalty, we are assured that the Respondent will write a letter of apology to Master Barber.