2005 LSBC 21
Report issued: July 8, 2005
Oral Reasons: May 25, 2005
Citation issued: November 25, 2004

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

William Fredric Murray

Respondent

Decision of the Hearing Panel

Hearing date: May 25, 2005

Panel: Ralston S. Alexander, Q.C., Single Bencher Panel

Counsel for the Law Society: Brian McKinley
Counsel for the Respondent: Herman Van Ommen

[1] On November 25, 2004, a citation was issued against the Respondent pursuant to the *Legal Profession Act* and Rule 4-15 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. That in a matter in which Ms. Jenab represented the Defendants A.I. and F.D., you failed to respond to correspondence from Ms. Jenab in which she requested clarification regarding time limitations referred to in your letter dated March 21, 2003 to her before taking default judgment; and

2. That you, while representing your client W.R., failed to respond to correspondence from Mr. Gregory, subsequent counsel for the Defendant A.I., when such correspondence required a reply.

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

[3] This citation comes before this Panel as a conditional admission of a disciplinary violation and consent to specific disciplinary action pursuant to Rule 4-22. The Respondent admitted that he professionally misconducted himself and consented to the following disciplinary action:

(a) a fine in the amount of $2,000; and

(b) costs in the amount of $1,000.

Agreed Statement of Facts

[4] An Agreed Statement of Facts was filed as Exhibit 3 in these proceedings. It provides as follows:

1. William F. Murray was called to the bar in British Columbia on May 14, 1976.

2. Mr. Murray practiced law with Jestley Kirstiuk from May 1976 to November 1982, with Sutton

Braidwood from November 1982 to October 1985, with Richards Buell Sutton from October 1985 to May 1989, with Murray Remedios and Stewart from May 1989 to December 1995, with Remedios and Company from January 1996 to December 1996, with Bruce C.E. Russell from December 1996 to July 1997, and with Metro Law Office LLP in Burnaby from July 1997 to present.

3. In 2003, Mr. Murray acted for plaintiff W.R. in a dispute involving the corporate defendant A.C.C. Inc. (“ the Company") and personal defendants A.I. and F.D. The personal defendants were shareholders and directors of the Company. On February 22, 2003, Mr. Murray commenced an action on the plaintiff’ s behalf by filing a Writ of Summons in the Supreme Court of British Columbia alleging that the Defendants had defrauded the Plaintiff and wrongfully converted his $100,000 investment with the Company.

4. W.R. hoped to immigrate to Canada from Bangladesh. He had invested his life savings of $100,000.00 into the Company to meet his conditions for immigration. He alleged that his cheque was fraudulently deposited by A.I. into her sole proprietorship account instead of the company’ s account.

5. On or about March 4, 2003, the Company was served with the Writ of Summons.

6. On March 4, 2003, Mr. Murray wrote to both A.I. and F.D. on behalf of W.R. requesting that they as directors of the Company pass a corporate resolution to commence an action against A.I. and the Bank of Montreal with respect to an alleged fraud perpetrated against the Company and W.R. He indicated in his letter that if he did not receive a signed resolution by March 10, 2003, he would seek instructions from W.R. to apply for an order permitting him to bring a derivative action in the name of the Company.

7. On March 10, 2003, another member, Zahra Jenab, wrote to Mr. Murray advising that she was now acting for A.I. and F.D. She proposed that the action against F.D. be discontinued and suggested that Mr. Murray should apply to the Court for directions. She suggested that there may be a conflict in W.R. having commenced an action against the Company as plaintiff and then applying for an order permitting him to commence a derivative action on behalf of the Company, essentially for the same transaction. She advised that she would be away from the office from March 17 to 21, 2003.

8. On March 12, 2003, Mr. Murray wrote to Ms. Jenab indicating that he would not discontinue the action against F.D., that there was no conflict in the two actions, and advising that he would be applying to court for an order allowing his client to commence an action in the Company’ s name. He proposed that the defendant’ s pay W.R. $100,000 plus $10,000 in damages and costs. He concluded:

“ Failing that, we will proceed with our action and are confident we will obtain punitive damages and special costs. W. and his family are suffering mental anguish and nervous shock over this fraud. Because of this we intend to commence action against the banks (who will certainly third party your clients) and this [sic] we will only agree to give you until Monday, the 17 th to comply."

9. On March 13, 2003, A.I. was served with the Writ of Summons.

10. On March 17, 2003, Ms. Jenab’ s legal assistant sent a fax cover sheet to Mr. Murray advising that Ms. Jenab was away from the office until March 24, 2003, and thus unable to attend to the matter. The fax stated “ For the interim, we would appreciate that you provide us with more time to obtain instructions from our client."

11. On March 21, 2003, Mr. Murray replied with a fax cover sheet to Ms. Jenab, stating: “ No we will not provide any more time. … We put you on notice that we will be taking all possible measures to recover these funds and will insist on strict compliance with all time limitations."

12. On March 24, 2003, Ms. Jenab wrote to Mr. Murray. In that letter, she asked: " Please advise us if you have served our clients with the Writ of Summons. Incidentally, we understand that no Statement of Claim has been filed yet. Therefore, please kindly advise us with what time limitations you expect us to comply."

13. Mr. Murray did not reply to Ms. Jenab' s letter of March 24, 2003. Ms. Jenab had previously been counsel for Mr. Murray' s ex-wife in matrimonial proceedings against him. Mr. Murray claimed that he did not think that her request was genuine.

14. On April 3, 2003, Mr. Murray filed material to obtain default judgment against the Company and A.I. Default judgment was granted on April 4, 2003. Mr. Murray did not advise Ms. Jenab that he had obtained default judgment. She did not become aware of the default judgment until May 6, 2003.

15. On April 6, 2003, A.I. retained another lawyer George F. Gregory who did not communicate with Mr. Murray until April 16, 2003.

16. On April 15, 2003, Mr. Murray sent a Writ of Seizure to the Sheriff requesting that he execute the Writ. He did not know when the Sheriff would carry out those instructions.

17. On April 16, 2003, Mr. Gregory wrote to Mr. Murray, advising that he was now acting for A.I. He enclosed an Appearance in the matter and asked Mr. Murray to not take default proceedings without notice to him.

18. Mr. Murray did not respond to Mr. Gregory' s letter of April 16th. Mr. Murray believed that the Company did not have assets and was focused on W.R.' s claim against the Bank of Montreal for improperly cashing his cheque.

19. On May 6, 2003, the Sheriff attended at the Company' s premises to execute a Writ of Seizure and Sale obtained by Mr. Murray on behalf of his client.

20. On May 7, 2003, Mr. Gregory obtained an *ex parte* injunction restraining the sheriff from executing the Writ of Seizure and Sale.

21. On June 6, 2003, Madam Justice Gray of the Supreme Court of British Columbia set aside the default judgment on application by the Defendants, with costs payable to the defendants in any event of the cause.

22. Mr. Murray admits that the correspondence from Ms. Jenab dated March 24, 2003 required a response and that he failed to respond to it before taking default judgment.

23. Mr. Murray admits that his failure to respond to correspondence from Ms. Jenab dated March 24, 2003 requesting clarification of time limitations which he referred to in his correspondence to her dated March 21, 2003, before taking default judgment, is professional misconduct.

24. Mr. Murray admits that the correspondence from Mr. Gregory dated April 16, 2003 clearly required a reply and that he failed to reply to it.

25. Mr. Murray admits that his failure to respond to correspondence from Mr. Gregory dated April 16, 2003, when such correspondence clearly required a reply, is professional misconduct.

26. Mr. Murray and Counsel for the Law Society agree that the appropriate penalty should be a fine of $2,000.00 plus an Order for Costs in the amount of $1,000.00. Mr. Murray' s net income from the practice of law is lower than that of many other lawyers practicing in Vancouver.

[5] After considering the circumstances set out in the Statement of Facts, and having heard the submissions of counsel, the Panel accepts the admission and finds that the Respondent professionally misconducted himself.

[6] In the view of the Panel, this proposed disposition is at the very margin of acceptability. The mis-behaviors described are utterly unacceptable. No member of this profession may conduct themselves in this manner and escape considerable sanction. By dint of the process adopted here, this Respondent has substantially avoided a penalty that would be more appropriate in the circumstances.

[7] At the outset I must observe that a member' s impecunious circumstances are no excuse for professional misconduct. However, as an explanation for the modesty of this penalty is offered the notion that the member' s income is lower than that of many other lawyers practicing in Vancouver. In my view that can have no bearing on the establishment of an appropriate penalty. It is almost the same as saying that impecunious members get a better break for their misconducts than do more prosperous members. In my view, this is a notion that is unsupportable.

[8] Further, and in absolute terms, the penalty as accepted by the Discipline Committee in this matter must be the very least that it could have been in the circumstances of this case. One needs only to consider the inconvenience and stress visited upon the opposing counsel (and their clients) by these acts of misconduct to appreciate how troubling this penalty will appear to them.

[9] If the establishment of a penalty in this matter had been left to me as chair of the Panel, I would have seriously considered a period of suspension to be an appropriate outcome for this Respondent.

[10] At the end of the day I was persuaded to accept the outcome described as being acceptable only because it had the approval of the Discipline Committee and it was recommended to me by that group. The Discipline Committee is a very large Committee of the Law Society and is populated with many experienced members, including some non-bencher members and lay benchers. That group was satisfied in these circumstances with this outcome and I accorded the Committee some considerable deference in the result.

[11] It is my hope that these remarks will encourage the Discipline Committee to consider that there is always a need for the " punishment to match the crime" when dealing with similar matters in the future.

[12] The Executive Director is instructed to record the finding of professional misconduct on the Respondent' s Professional Conduct Record, to impose the disciplinary action and to inform the complainant of the disposition.