

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

Danine Lorraine Geronazzo

Respondent

**Decision of the Hearing Panel
on Penalty**

Hearing date: June 29, 2006

Panel: Ralston S. Alexander, Q.C., Chair, G. Glen Ridgway, Q.C., William J. Sullivan, Q.C.

Counsel for the Law Society: Gerald Cuttler

Appearing on her own behalf: Danine Geronazzo

Background

[1] On October 3, 2005 this Panel found that the Respondent had professionally misconducted herself in respect of two counts of a citation issued by the Law Society on February 1, 2005. The first count of the citation related to the failure of the Respondent to respond to three unrelated inquiries from the Law Society where the Law Society was seeking information to respond to complaints from former clients of the Respondent. The second count of the citation dealt with the failure of the Respondent to respond to inquiries from the Law Society in respect of a complaint from the office of the Public Guardian and Trustee.

[2] The Respondent appeared at the Penalty Hearing held at the offices of the Law Society on the 29th day of June, 2006, and made in person submissions in respect of the appropriate penalty in the circumstances.

Submissions of the Law Society

[3] The Respondent in these proceedings is presently the subject of an indeterminate suspension and is no longer a member of the Law Society as she allowed her membership to lapse by not paying membership dues when required.

[4] Counsel for the Law Society urged the Panel to suspend the Respondent for a period of time equal to the greater of one month and the period of time within which the Respondent replies to the communications from the Law Society that are the subject of the citation in this matter.

[5] Counsel argued that a penalty framed in this manner would serve the dual purpose of firstly ensuring that the Respondent attends to the inquiries from the Law Society with respect to the various outstanding issues. Second, the Law Society argues that if the Respondent seeks reinstatement, the penalty proposed will have the effect of bringing this matter to the attention of the Credentials Committee considering such a reinstatement, and that Committee will have an opportunity to assess the status of the Respondent's efforts to deal with the outstanding complaint in the context of examining her application for

reinstatement. The Law Society finally argued that the Respondent should pay costs.

Submissions of the Respondent

[6] The Respondent argued that the penalty provisions of Section 38 of the *Legal Profession Act* do not permit the penalty sought by the Law Society. She argued that a suspension must be for a specified period of time as set out in Section 38(5)(d)(i) of the *Legal Profession Act*. She referred to a number of authorities including *Law Society of BC v. Hall*, [2003] LSBC 34, *Law Society of BC v. Hall*, [2003] LSBC 11, *Law Society of BC v. Ashton*, [2003] LSBC 23, *Law Society of BC v. Dobbin*, Discipline Case Digest 00/7, and *Law Society of BC v. Wittchen*, Discipline Case Digest 98/21. She suggests that those authorities indicate that a suspension in the order of one month is suggested in the circumstances.

[7] The Respondent noted that the Law Society's requirement that she respond to the outstanding complaints is an unrealistic one given that the materials that she needs to review in order to respond are no longer in her possession. She ceased practising as an employee of a firm and two years later the firm's practice was transferred to the possession of the custodian.. She suggests that, in the result, it is impossible for her to respond to the complaints at this time.

[8] Finally, the Respondent argued that it was, in her view, inappropriate for her to be required to pay costs in the amount claimed by the Law Society.

Discussion

[9] It is often a difficult matter for a Panel to settle upon an appropriate penalty for a multi-count citation where the various delicts are similar or identical in nature. The problems are compounded when the Panel is seeking to settle an appropriate penalty for a suspended or former member. That is the problem facing this Panel.

[10] On the one hand, there is a very strong desire and need to demonstrate that the public interest in the administration of the business of the Law Society, and particularly ensuring appropriate outcomes from discipline proceedings, requires that the Law Society clearly establish an obligation in all members to respond to communications with respect to investigations of complaints.

[11] In the circumstances of this citation, the Panel is frustrated by the apparent reluctance of the Respondent to address the reality that she has yet to respond to the inquiries from the Law Society in respect of four outstanding complaint matters. The complaints are not before this Panel and the seriousness of them cannot be assessed. It is however the case that any matter requiring the Law Society to open an investigation file is a matter that demands of the membership a prompt and complete answer to any questions raised by the investigation. The obligation to respond is not relieved by an interim suspension and does not go away when the membership of the responding lawyer is allowed to lapse.

[12] Members of the public are entitled to have their concerns addressed and this can only occur if the membership is vigilant and prompt in its response to Law Society inquiries. This Respondent has displayed none of those characteristics and has offered in response her explanation that the materials she needs in order to respond are beyond her physical reach. We note in passing on this point that it would be a straightforward matter for the Respondent to have arranged with the Law Society for a meeting to take place where her file material was present so that it could be reviewed by her. In this approach, the Respondent would be able to formulate the necessary responses to the inquiries of the Law Society. No such effort was undertaken by her, and the investigation of the complaints at this time is frustrated and incomplete.

[13] The Panel is not inclined to accept Mr. Cuttler's suggestion that we impose upon this Respondent a suspension penalty that is conditional and time limited by her providing a response to the outstanding complaints. It is the view of the Panel that we do not have authority to make such an order as Section 38 of the *Legal Profession Act* appears to limit the scope for conditional suspension to matters where a member is required to complete a remedial program, to appear before a Board of Examiners, or to practise law in a firm of other lawyers. The Panel does not believe there is authority to support the penalty sought by Mr. Cuttler and we decline to do so.

[14] Mr. Cuttler's goals are laudable in that he was seeking by them to impress upon the Respondent the need for her to respond to the complaints made to the Law Society. It is not entirely clear that his suggested approach would have that result, but the argument is moot as we do not think there is authority to impose the conditions he seeks. We do know, as much for the information of the Respondent as for the precedential value of these reasons, that on any application for reinstatement wherein the Respondent seeks to rejoin the Law Society, her conduct record will be reviewed, and the fact of her having outstanding and unanswered complaints will be a matter considered by the Credentials Committee.

Conclusion

[15] While it is of no particular impact upon the Respondent at this time, the Panel orders that the Respondent be penalized for the professional misconduct described earlier in these reasons, by being suspended from the practice of law for a period of two months, with that suspension to take effect immediately upon the Respondent successfully being reinstated as a member of the Law Society. We additionally order that the Respondent pay costs in the amount of \$1,000.00. There will be publication of this outcome in the normal course.

[16] We confirm that in arriving at this penalty, we have had regard to the Professional Conduct Record of the Respondent.