

2007 LSBC 45

Report issued: October 11, 2007

Oral Reasons: September 28, 2007

Citation issued: June 13, 2007

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

Roger Roy Plested

Respondent

Decision of the Hearing Panel

Hearing date: September 28, 2007

Panel: James D. Vilvang, Q.C., Chair, Leon Getz, Q.C., Art Vertlieb, Q.C.

Counsel for the Law Society: Maureen Boyd

Counsel for the Respondent: Jerome Ziskrout

Background

[1] On June 13, 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 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 failure to serve your client, the Estate of A.W., 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, including:
 - (a) Your failure to reply to telephone communications and letters dated December 27, 2006 and April 12, 2007, requiring responses, from T.S., executor of the Estate of A.W.
 - (b) Your failure to keep your client reasonably informed.
 - (c) Your failure to provide services in a prompt manner or, alternatively, your failure to inform your client of the reasons for the delay.
2. Your failure to reply promptly or at all to communications from the Law Society concerning its investigation of the complaint of T.S., contrary to Chapter 13, Rule 3 of the *Professional Conduct Handbook*, and in particular your failure to respond to:

- (a) Telephone messages on January 15, 2007 and January 17, 2007; and
- (b) Letters dated January 25, 2007, February 20, 2007, March 7, 2007 and March 14, 2007.

3. Your failure to serve your client, C. Financial Services, 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, including:

- (a) Your failure to reply to communications from the mortgage administrators, requiring responses, and in particular facsimile transmissions on July 5, 2006, September 27, 2006 and January 4, 2007, and a telephone message on November 2, 2006.
- (b) Your failure to keep your client reasonably informed.
- (c) Your failure to provide services in a prompt manner or, alternatively, your failure to inform your client of the reasons for the delay.

4. Your failure to reply promptly or at all to communications from the Law Society concerning its investigation of the complaint of B.R., contrary to Chapter 13, Rule 3 of the *Professional Conduct Handbook*, and in particular your failure to respond to letters dated February 20, 2007, March 15, 2007 and April 2, 2007.

[2] This hearing proceeded on a Statement of Agreed Facts, which is summarized below.

Statement of Agreed Facts

1. On May 15, 1974, Roger Plested (the " Respondent") was admitted to the Bar of British Columbia.
2. The Respondent practises as a sole practitioner in Kamloops, British Columbia, and has done so for most of his career.
3. On or about January 5, 2007, the Law Society received a complaint (the " Estate Complaint"), from a client who was the executor of an estate (the " Executor").
4. Ruth Long, a Professional Conduct Staff Lawyer, was assigned to investigate the Estate Complaint. She telephoned the Respondent's office three times on each of January 15, 2007, January 17, 2007 and January 23, 2007. As the Respondent did not answer the telephone, Ms. Long left voice mail messages requesting he call her about the Estate Complaint. The Respondent received these telephone messages but did not return Ms. Long's calls.
5. On January 25, 2007, Ms. Long sent a letter to the Respondent advising him of the Estate Complaint. In this letter, Ms. Long stated that:

I would greatly appreciate if you or someone on your behalf would contact me by telephone to let me know if you are able to contact [the Executor] and deal with this matter directly. If you are

unable to do so due to your health problems, can you please advise whether you have any arrangements for someone else to look after your practice matters if you are away from your practice at this time?

The Respondent received this letter but did not respond to Ms. Long.

6. On each of February 20, 2007, March 7, 2007 and March 14, 2007, Ms. Long sent follow-up letters to the Respondent with respect to the Estate Complaint. In the final letter dated March 14, 2007, Ms. Long advised that:

In the event your response to the complaint in this matter is not received within **five calendar days** from the date of this letter, this matter will be referred to the Discipline Committee of the Benchers. The Committee may evaluate the substance of the complaint based on the information we have available as well as consider your failure to respond to Law Society correspondence.

The Respondent received each of these letters but he did not respond to Ms. Long.

7. The Respondent admits that he failed to respond promptly to communications from the Law Society which required a response, and in particular to telephone messages on January 15, 2007, January 17, 2007 and January 23, 2007, and to letters dated January 25, 2007, February 20, 2007, March 7, 2007 and March 14, 2007, and that he did not respond at all to these communications until June 4, 2007, after the citation in this matter was authorized. The Respondent admits that in failing to respond to these communications he breached his obligation in Chapter 13, Rule 3 of the *Professional Conduct Handbook*. He further admits that his failure to respond constitutes professional misconduct.

8. On or about May 11, 2006, the Respondent was retained by C. Financial Services Association (the "Mortgagee") to attend to the preparation, execution and registration of a mortgage (the "Mortgage") in the amount of \$185,000 against property owned by L.E. (the Mortgagor).

9. On May 11, 2006, the Mortgagee provided to the Respondent written instructions that, amongst other things, required the Respondent to provide a solicitor's report within 30 days after the advance of the Mortgage funds. The Respondent received these instructions.

10. The closing date for this transaction was May 16, 2006.

11. On May 12, 2006, the Respondent met with the Mortgagor to execute the Mortgage.

12. On May 16, 2006, the Respondent registered the Mortgage in the Land Title Office

13. On each of July 5, 2006, September 27, 2006 and January 4, 2007, the Mortgagee by fax requested that the Respondent provide the solicitor's final report as well as certain documentation relating to the Mortgage. The Respondent received these faxes, but he did not respond to the Mortgagee.

14. On November 2, 2006, an employee of the Mortgagee attempted to contact the Respondent by telephone. The employee left a voice mail message requesting the Respondent provide the solicitor's final report and related documentation. The Respondent received this telephone message but did not

call the Mortgagee.

15. On January 30, 2007, the Mortgagee filed a complaint (the " Mortgage Complaint") with the Law Society.

16. On May 16, 2007, the Respondent provided to the Mortgagee the solicitor's final report and the required documentation, which was satisfactory to the Mortgagee.

17. The Respondent admits that he failed to serve his client C. Financial Services Association in a conscientious, diligent and efficient manner, contrary to Chapter 3 Rule 3 of the *Professional Conduct Handbook*, and in particular that he failed to:

- (a) reply to communications from his client, which required responses, being faxes dated July 5, 2006, September 27, 2006 and January 4, 2007 and a telephone message on November 2, 2006;
- (b) keep his client reasonably informed;
- (c) provide services in a prompt manner; and
- (d) make a prompt and complete report to his client when the work was finished.

The Respondent admits that these failures constitute professional misconduct.

18. On February 20, 2007, Ruth Long sent a letter to the Respondent advising him of the Mortgage Complaint. In this letter, Ms. Long stated that:

I would appreciate receiving your response within three weeks of the date of this letter. If you anticipate a problem meeting this deadline, please let me know, so we can arrange another date by which I may expect to have your response.

The Respondent received this letter but did not respond to Ms. Long.

19. On each of March 15, 2007, and April 2, 2007, Ms. Long sent follow-up letters to the Respondent with respect to the Mortgage Complaint. The Respondent received these letters but did not respond to Ms. Long.

20. The Respondent admits that he failed to respond promptly to communications from the Law Society which required a response, and in particular to letters dated February 20, 2007, March 15, 2007, and April 2, 2007, and that he did not respond at all to these communications until June 4, 2007, after the citation in this matter was authorized. The Respondent admits that in failing to respond to these letters he breached his obligation in Chapter 13, Rule 3 of the *Professional Conduct Handbook*. He further admits that his failure to respond constitutes professional misconduct.

[3] The Panel finds the Respondent guilty of professional misconduct as admitted by the Respondent in paragraphs 7, 17 and 20 of the Statement of Agreed Facts.

[4] The Panel notes that, after the citation was issued, the Respondent did respond to the Law Society with respect to both matters and did provide the appropriate report to his client in relation to the mortgage.

[5] The Respondent is 60 years of age. He was called to the Bar of British Columbia in 1974 and has practised as a sole practitioner in Kamloops ever since.

[6] The Respondent has only one previous Conduct Review on his Professional Conduct Record. That was in 2003, but it also involved failing to promptly deal with a client's matter and failure to respond to his client's inquiries.

[7] We note that, at the time of the Conduct Review, the Respondent acknowledged that he needed to improve the management of his practice and had started to take steps to do so.

[8] The Respondent's past efforts to improve the management of his practice have not been adequate.

[9] The Respondent appears to be an honest, hard-working practitioner, but he spends a considerable amount of time doing work on behalf of people who cannot pay for his services. While this is laudable, it does not excuse a failure to respond to communications from the Law Society and to report properly to clients following his work on their behalf.

[10] The Respondent earns a net, after-tax income of about \$30,000 to \$40,000 per year. We have taken this modest income into account in determining the appropriate monetary penalty.

[11] The Panel regards failure to respond to communications from the Law Society as a serious matter.

[12] We find the circumstances set out in *Law Society of BC v. Braker*, 2006 LSBC 07 to be similar to this case, but Mr. Braker's income was much higher than the Respondent's, according to submissions made at the hearing.

[13] Counsel for the Law Society has also helpfully referred us to the non-exhaustive list of factors that may be considered by a panel in determining penalty as set out in *Law Society of BC v. Ogilvie*, [1999] LSBC 17.

[14] Having regard to the facts presented, the submissions of both counsel and the authorities referred to, we order that the penalty shall be:

1. A referral to the Practice Standards Committee and a direction to the Respondent to abide by its directions and orders and to remain under its jurisdiction until released by that Committee.
2. A fine in the amount of \$1,000.
3. Costs of the hearing in the amount of \$1,250.

[15] We further order that the fine and costs aforesaid be paid within four months of the date of the issuance of this decision.

[16] The Panel endorses the principle that, normally, there should be full indemnity for costs, but in this case, we find that approximately 50% indemnity for costs is appropriate, having consideration for the factors enumerated in *Law Society of BC v. Racette*, 2006 LSBC 29, including:

- (a) the seriousness of the offence;

(b) the financial circumstances of the Respondent; and

(c) the extent to which the conduct of each of the parties has resulted in costs accumulating or, conversely, being saved.

[17] If the Respondent's income had been greater, full indemnity would have been appropriate. While the fine we have imposed may seem small, we want to stress that we regard the subject matter of these complaints to be serious. We believe that the fact of a fine, rather than the amount of a fine, expresses the Panel's recognition of the need for our penalty to achieve the goals of specific and general deterrence and the need to ensure the public's confidence in the integrity of the profession. Again, if the Respondent's income had been higher, a higher fine would have been appropriate.

[18] We appreciate that the Respondent has acknowledged his misconduct and already taken steps recommended by his counsel to remedy the problems of his practice. We hope that the Respondent's involvement with the Practice Standards Committee will further assist in his rehabilitation.

[19] The Panel wishes to express its gratitude to both counsel for their thoughtful submissions.