

2007 LSBC 47

Report issued: October 31, 2007

Citation issued: August 30, 2006

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

Heather Catherine Cunningham

Respondent

**Decision of the Hearing Panel
on Penalty**

Hearing date: September 14, 2007

Panel: Gordon Turriff, Q.C., Chair, Gerald Lecovin, Q.C., Dirk Sigalet, Q.C.

Counsel for the Law Society: Jaia Rai

Counsel for the Respondent: F. A. Schroeder

Background

[1] During the period April, 2005 to May 2006, the Respondent failed to respond to Legal Services Society ("LSS") inquiries concerning a client complaint to LSS. The Respondent then failed to respond to the Law Society of British Columbia ("LSBC") for purposes of setting a date to hold a Conduct Review that had been authorized by the Discipline Committee. Fifteen separate communications from LSS and LSBC to the Respondent were, over this 12-month period, ignored.

[2] On January 11, 2007 we decided that the Respondent's conduct amounted to professional misconduct. During the course of the January 11 hearing, the Respondent stated that she would attend to the LSS inquiry. She did not do so until May 29, 2007.

Reasons and Decision

[3] The Respondent does not have a professional conduct record. She was called later in her life to the British Columbia Bar in 2001. With her present practice load of 25 files (all family law matters), the Respondent has an annual income of \$24,000. There is no evidence to explain the Respondent's professional misconduct. This misconduct is her first offence and, it appears, the only offence. It is an offence that is out of character. The Respondent has properly dealt with other, unrelated response requests.

[4] Ms. Rai, LSBC counsel, made a capable submission for a two month suspension, citing *Law Society of BC v. Dobbin*, [1999] LSBC 27, persuasively emphasizing that the failure to respond goes to the heart of the Law Society's ability to regulate the profession and, as such, is an extremely grave offence. In turn, the Law Society's ability to regulate must be firmly demonstrated to the public so as to maintain the legal profession's right to self-govern.

[5] We agree but, in this particular case, we find that since the Respondent's misconduct is a first and isolated event, suspension of one or two months would not, on the basis of the guidelines listed in *Law Society of BC v. Ogilvie*, [1999] LSBC 17, be appropriate. In this Respondent's financial circumstances, payment of any fine and any amount of costs for this Respondent is a punishment of significant specific deterrence. Accordingly, we impose a \$2,000 fine and costs of \$5,000 on the Respondent. The total amount of \$7,000 must be payable in 18 months, on or before May 1, 2009.