

2007 LSBC 46

Report issued: October 25, 2007

Citation issued: May 3, 2007

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

Larry William Goddard

Respondent

**Decision of the Hearing Panel
on Facts and Verdict**

Hearing date: September 17, 2007

Panel: Leon Getz, Q.C., Chair, Kenneth M. Walker, Ralston S. Alexander, Q.C.

Counsel for the Law Society: Maureen Boyd

No-one appearing on behalf of the Respondent

Background

[1] On May 3, 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 detailed as follows:

Your conduct representing your client in a loan transaction

1. In representing your client in a loan transaction from F.C.C. (" FCC") to [numbered company], you were bound by an undertaking set out in either or both of letters dated June 27, 2004 and October 25, 2004 from opposing counsel to you, as follows:

The funds herein will be sent to you on your undertakings to:

Attend to payment of sufficient funds to the solicitors for the Vendors, in trust, to legally obligate them to provide discharges of all financial charges registered in the Land Title Office against the subject property and to provide our office with discharge particulars within 60 days. The only charge against this property permitted by FCC is the Undersurface Rights numbered 239328C;

You breached this undertaking by:

- (a) failing to provide discharge particulars within 60 days; and
- (b) failing to obtain discharges of all financial charges registered against the subject property within a reasonable period of time,

contrary to Chapter 11, Rule 7 of the *Professional Conduct Handbook*.

2. In representing your client in a loan transaction from FCC to [numbered company], you failed to respond reasonably promptly to communications from another lawyer, being a letter dated October 3, 2005 from Edward Fast, which letter required a response. Your failure to respond was contrary to Chapter 11, Rule 6 of the *Professional Conduct Handbook*.

Your conduct representing your client L.M. in the sale of a mobile home

3. In representing your client L.M. in a sale of a mobile home, you were bound by an undertaking set out in a letter to you dated September 25, 2000 from P.F., a notary representing the purchasers, and confirmed by you in your letter dated October 3, 2000 to P.F., as follows:

... to file a release of the existing PPSA charge registered against the above-noted mobile home in favour of K. Enterprises Ltd. and to provide [P.F.'s] office with confirmation of same.

You breached this undertaking by failing to file a release of the existing PPSA charge on the property within a reasonable period of time, contrary to Chapter 11, Rule 7 of the *Professional Conduct Handbook*.

4. In representing your client L.M., you failed to respond reasonably promptly to communications from P.F., a notary representing the purchasers, and in particular to letters dated January 20, 2006 (which was resent February 23, 2006) and March 2, 2006, which letters required a response.

Your conduct in representing your client A.C. and/or R.C. in a real estate transaction

5. In representing your client A.C. and/or R.C. in a real estate transaction, you were bound by an undertaking set out in a letter dated January 31, 2006 from K.G., a notary representing the purchasers, as follows:

2. provide to [K.G.] within five business days of the completion date, copies of the following:

- (a) your letter providing CIBC Mortgage Corporation with the payout monies;
- (b) CIBC Mortgage Corporation's payout statement ...
- (c) your cheque paying the payout monies to CIBC Mortgage Corporation;
- (d) evidence of delivery or receipt of the payout cheques at CIBC Mortgage Corporation's respective place of business ...

5. Pay to [numbered company] or their Solicitors, the amount required by its payout statement to payout and legally obligate the existing charge holder to provide the Discharge of Mortgage #[number], which Discharge you must have on hand prior to or concurrently with the releasing the funds to the existing charge holder or their Solicitors, and forthwith attend to the registration of same in the Land Titles Office and provide me with registration particulars of same within

a reasonable time period.

You breached this undertaking by:

- (a) failing to provide payout particulars with respect to the CIBC mortgage within 5 business days of the completion date; and
- (b) failing to obtain a discharge of mortgage #[number] held by [numbered company] within a reasonable period of time,

contrary to Chapter 11, Rule 7 of the *Professional Conduct Handbook*.

Your conduct in representing your clients V.S. and M.S. in a real estate transaction

6. In acting for your clients V.S. and M.S. in a real estate transaction, you failed to provide them with the quality of service at least equal to that which would be provided by a competent lawyer in a similar situation, in that you failed to provide a registrable Form A to the notary representing the purchaser to effect the transfer of title, contrary to Chapter 3, Rule 3 of the *Professional Conduct Handbook*.

7. In acting for your clients V.S. and M.S. in a real estate transaction, you failed to respond reasonably promptly to communications from S.S., a notary, and in particular to letters dated February 9, 2006 (which was resent February 13, 2006) and March 2, 2006, which letters required a response.

Your conduct in representing your client S.K. in a real estate transaction

8. In representing your client S.K. in a real estate transaction, you failed to provide her with the quality of service at least equal to that which would be provided by a competent lawyer in a similar situation, in that you failed to prepare documents accurately and as a result disbursed to her less of the sale proceeds than were owed to her, contrary to Chapter 3, Rule 3 of the *Professional Conduct Handbook*.

Your conduct in failing to respond to the Law Society

9. You failed to respond promptly or at all to communications from the Law Society with respect to its investigation of the complaint of H.W., contrary to Chapter 13, Rule 3 of the *Professional Conduct Handbook*, and in particular to letters dated November 14, 2006, November 28, 2006, and December 8, 2006.

10. You failed to respond promptly or at all to communications from the Law Society with respect to its investigation of the complaint of P.F., contrary to Chapter 13, Rule 3 of the *Professional Conduct Handbook*, and in particular to letters dated November 14, 2006, November 28, 2006 and December 8, 2006.

11. You failed to respond promptly or at all to communications from the Law Society with respect to its investigation of the complaint of K.G., contrary to Chapter 13, Rule 3 of the *Professional Conduct Handbook*, and in particular to letters dated December 5, 2006, December 19, 2006 and January 2, 2007.

12. You failed to respond promptly or at all to communications from the Law Society with respect to its investigation of the complaint of S.S., contrary to Chapter 13, Rule 3 of the *Professional Conduct Handbook*, and in particular to letters dated November 14, 2006, November 28, 2006, and December 8, 2006.

13. You failed to respond promptly or at all to communications from the Law Society with respect to its investigation of the complaint of S.K., contrary to Chapter 13, Rule 3 of the *Professional Conduct Handbook*, and in particular to letters dated November 14, 2006, November 28, 2006, and December 8, 2006.

14. You failed to respond promptly or at all to communications from the Law Society with respect to its investigation of the complaint of T.H. and K.K., contrary to Chapter 13, Rule 3 of the *Professional Conduct Handbook*, and in particular to letters dated November 14, 2006, November 28, 2006, December 5, 2006 and December 15, 2006.

15. You failed to respond promptly or at all to communications from the Law Society with respect to its investigation of the complaint of K.N., contrary to Chapter 13, Rule 3 of the *Professional Conduct Handbook*, and in particular to letters dated October 24, 2006, November 14, 2006, November 28, 2006, and December 8, 2006.

[2] We note that the matters covered by these allegations extend over a period from September 2000 (see count 3 above) to January 2007 (see count 11 above).

[3] Counsel for the Law Society advised us that she would not be proceeding on count 8 above.

Preliminary

[4] The Respondent was duly served on May 16, 2007 with a copy of the citation and notice of a hearing to be held on September 17, 18 and 19, 2007. On August 24 the Hearing Administrator contacted the Respondent by email with a view to arranging a pre-hearing conference. He responded by saying that it was difficult, for health reasons, for him to commit himself to any dates. The Hearing Administrator thereupon advised him that under section 42(2) of the *Legal Profession Act*, the hearing could proceed in his absence; that he should consider retaining counsel; and that if he had health difficulties he could apply under Rule 4-29 for an adjournment. The Respondent did not seek an adjournment, nor did he appear at the hearing, either in person or by counsel.

[5] The Respondent did refer to his health issues again in a letter dated the date of this hearing and addressed to Law Society counsel. That letter, together with certain earlier correspondence from the Respondent that was attached to it, was at his request filed at the hearing. All of this correspondence relates to the Respondent's health issues and, while there is no information in the record about the nature or extent of those issues, we accept that he does have health problems.

[6] We decided that, under section 42(2) of the *Legal Profession Act*, it was appropriate for us, in the circumstances, to proceed in the Respondent's absence, and we accordingly did so.

Other Background

[7] The Respondent was suspended from practice for two months between May 15 and July 15, 2006. The Respondent resumed practice on September 15, 2006 and continued to practise with a practice supervisor until his resignation on March 16, 2007.

[8] On November 14, 2006, the Respondent gave a written undertaking to the Law Society to cease practising within 90 days, i.e. by February 14, 2007. On January 2, 2007, the Respondent advised Gurprit Gill, a lawyer in the Professional Conduct Department of the Law Society, that he had arranged for another lawyer to take over his practice. He said he was taking no new files but was winding up his practice. Following his resignation in March, 2007 Erin Ryder, a lawyer with the Law Society, was appointed as the Custodian of the Respondent's practice.

Affidavit Evidence

[9] Law Society Rule 5-5(6) says that a hearing panel may accept as evidence any of:

- (a) a statement of agreed facts;
- (b) evidence tendered in a form agreed to by the respondent or applicant and Society counsel; and
- (c) any other evidence it considers appropriate.

[10] Counsel for the Law Society sought leave to tender and to rely on eight affidavits. Seven of these affidavits were sworn by former clients of the Respondent or others who had had dealings with him that resulted in complaints to the Law Society about his conduct. These complaints form part of the subject matter of the citation. The eighth affidavit is that of Ms. Ryder, referred to in paragraph [8] above. This relates to two particular matters that arose during the course of the hearing to which we refer further below. We adjourned for the purpose of receiving it.

[11] Copies of each of the affidavits upon which the Law Society proposed to rely (including that of Ms. Ryder) were provided to the Respondent. The Respondent was invited to review them and advise whether he objected to their admission as evidence. The Respondent was also asked whether he wished to have the opportunity to cross-examine any of the deponents.

[12] In response, the Respondent indicated that lack of access to his files made it difficult for him to determine whether the affidavits "are correct or complete." He had on earlier occasions invoked lack of access to his files as an explanation for his inability to respond in a timely way to various inquiries and allegations made of and against him. The files are in the possession of Ms. Ryder as custodian of his practice. The Panel was led to understand, however, that the Respondent had never made any request to the custodian (or anyone else) for such access. In any event, there is no evidence that he did so. We should add that the Respondent was also provided with a copy of Ms. Ryder's affidavit and invited to comment on it. He did not respond to that invitation.

[13] With the exception of Ms. Ryder, almost all of the deponents reside or work at some distance from Vancouver.

[14] Counsel for the Law Society advised us that, in the course of satisfying its disclosure obligations to the Respondent under Rule 4-25, it had provided him with copies of something in excess of 400 documents.

[15] Taking into account the matters referred to in paragraphs [10] to [14], the Panel decided to accept as evidence the affidavits and the exhibits attached to them.

[16] The Panel also received the oral evidence of Ms. Gill. She had extensive contacts with the Respondent, by telephone, email and letter in connection with the subject matter of the citation. Ms. Gill's evidence was mainly directed to proving an extensive collection of documents relating to these contacts.

Standard of Proof

[17] The principles in this connection are well established and do not require the citation of any authorities. The onus is on the Law Society. It must make out its case to a standard that falls, depending on the seriousness of the allegation and its consequences, between a balance of probabilities and beyond a reasonable doubt. We have adopted this standard of proof in our consideration of the matters before us.

Findings

[18] We do not think that any useful purpose will be served by an extensive and detailed review either of the facts revealed by the evidence or of the applicable law.

[19] As to the facts, in our opinion the evidence demonstrates abundantly, beyond a reasonable doubt and, in any event, much more than on the balance of probabilities, and we find, that the Respondent:

- (a) committed a breach of the undertakings to which he was subject, as set out in counts 1, 3 and 5 of the citation;
- (b) in acting as solicitor on behalf of clients in respect of the transactions identified in counts 1, 3, 5 and 6 of the citation, failed to respond on a timely basis or at all to communications from other lawyers or notaries public acting on behalf of other parties to those transactions, which communications required a response, as alleged in counts 2, 4 and 7 of the citation;
- (c) failed, in the manner set out in count 6 of the citation, to provide his clients V.S. and M.S. with the quality of service at least equal to that which would be provided by a competent lawyer in a similar situation, as alleged; and
- (d) failed, in the circumstances set out in counts 9 to 15 of the citation, to respond on a timely basis or at all to communications from the Law Society in the course of its investigation of the complaints referred to in those paragraphs.

Professional Misconduct

[20] In *Law Society of BC v. Martin*, 2005 LSBC 16 the Hearing Panel, at paragraph [171] of its reasons, said that the test of whether conduct is to be considered "professional misconduct" is whether it represents "a marked departure from that conduct the Law Society expects of its members."

Undertakings

[21] The position of the Law Society in connection with matters relating to undertakings is well known. Chapter 11, Rule 7 of the *Professional Conduct Handbook* says, among other things, that a lawyer must "fulfil every undertaking given" and "scrupulously honour any trust condition once accepted." Rule 5 of the same Chapter requires a lawyer to be "punctual in fulfilling all professional commitments." The Hearing Panel in *Law Society of BC v. Heringa*, [2003] LSBC 10, in a passage quoted with approval by the Court of Appeal [2004 BCCA 97], observed:

[37] Undertakings are not a matter of convenience to be fulfilled when the time or circumstances suit the person providing the undertaking; on the contrary, undertakings are the most solemn of promises provided by one lawyer to another and must be accorded the most urgent and diligent attention possible in all of the circumstances.

[38] The trust and confidence vested in lawyer's undertakings will be eroded in circumstances where a cavalier approach to the fulfillment of undertaking obligations is permitted to endure. Reliance on undertakings is fundamental to the practice of law and it follows that serious and diligent efforts to meet all undertakings will be an essential ingredient in maintaining the public credibility and trust in lawyers.

[22] We have little difficulty in concluding, therefore, that the Respondent's breach of the undertakings to which he was subject, as set out in counts 1, 3 and 5 of the citation, constituted professional misconduct.

[23] We add this. The affidavit of Ms. Ryder, the custodian of the Respondent's practice, indicates that the undertaking referred to in paragraph 1(b) of the citation has now been satisfactorily dealt with; and that she expects that the undertaking referred to in paragraph 5(b) of the citation will have been satisfactorily dealt with within a very short time.

Responding to Communications

[24] Chapter 11, Rule 6 of the *Professional Conduct Handbook* requires a lawyer to reply "reasonably promptly to any communication from another lawyer that requires a response," and in *Law Society of BC v. Smith*, 2005 LSBC 27 at paragraph [8] the Hearing Panel made it clear, in our view entirely appropriately, that that obligation extends to communications from others who are not lawyers.[1] In the *Smith* case (*supra*), the Hearing Panel concluded that a breach of Chapter 11, Rule 6 in failing to respond to another lawyer constitutes professional misconduct.

[25] We can think of no principle that justifies a different characterization of a failure to respond to a communication requiring a response from someone who is not a lawyer.

[26] Chapter 13, Rule 3 of the *Professional Conduct Handbook* says that "a lawyer must reply promptly to any communication from the Law Society," and the jurisprudence is clear that, except in circumstances of an "incapacitating illness" - see *Law Society of BC v. Cunningham*, 2007 LSBC 17 - such a failure constitutes professional misconduct.

[27] There is no evidence of any such incapacitating illness, and we have little difficulty in concluding, therefore, that the Respondent's failure to respond on a timely basis or at all to communications from other lawyers, clients or others, including the Law Society, as alleged in counts 2, 4, 7 and 9 to 15 inclusive of the citation, constituted professional misconduct.

Inadequate Quality of Service

[28] Chapter 3, Rule 3 of the *Professional Conduct Handbook* requires lawyers to meet a quality of service equivalent to that of a competent lawyer in a similar situation. The Rule goes on to set out criteria against which that level of service may be measured. Competent service includes, for example, keeping a client "reasonably informed," responding when necessary to the client's telephone calls, answering within a reasonable time a communication that requires a reply and doing work promptly "so that its value to the client is not diminished or lost." Finally in this connection, we refer to Chapter 3, Rule 5, which requires a lawyer to "make all reasonable efforts to provide prompt service to each client and, if the lawyer foresees undue delay," to inform the client promptly of this.

[29] The evidence presented to us shows beyond the possibility of argument that, in connection with his representation of Mr. and Mrs. S., the Respondent failed to meet the required standard of competent service in each of the respects specified in the *Handbook*. In our view, this failure constituted professional

misconduct as alleged in count 6 of the citation.

Summary

[30] For the reasons we have given, we have reached the conclusions set out in paragraphs [22], [27] and [29] above.

[1] There are, doubtless, certain common sense limitations on the obligation to respond to non-lawyers, but since they do not arise here we do not need to consider them.