

2007 : No. 4 October

Hugh Braker, Q.C.

Port Alberni, BC

Called to the bar: May 10, 1984

Discipline hearing : December 6, 2006 and July 6, 2007

Panel : William Jackson, Chair, Bruce LeRose, QC and David Renwick, QC

Reports issued : January 4, 2007 (2007 LSBC 01) and September 19, 2007 (2007 LSBC 42)

Counsel : Maureen Boyd for the Law Society, Hugh Braker, QC appearing on his own behalf at the discipline hearing and M. Louise Mandell, QC for Braker at the penalty hearing.

Facts

JC and JC, Jr. hired Hugh Braker, QC to represent them in their personal injury claims. In November 2005, the clients became dissatisfied with Braker's services and retained new counsel, Lawyer B.

On November 16 and 18, 2005, Lawyer B advised Braker by fax that he had been consulted by the clients and requested Braker's confirmation of the status of their claims. Lawyer B also inquired whether the claims had been dismissed for want of prosecution and, if so, what remedial steps Braker's firm was taking. By a letter to Braker dated November 30, 2005, Lawyer B confirmed his engagement by the clients, and requested Braker to forward his client file as soon as possible.

Braker did not reply to any of Lawyer B's letters and did not forward the client file to him.

On February 7, 2006 JC and JC, Jr. filed a complaint with the Law Society about Braker's services. In a February 13 telephone conversation with a Law Society staff lawyer, Braker denied having received Lawyer B's November 30, 2005 letter. By letters dated February 14, March 7 and March 21, 2006 the Law Society requested Braker's response to the complaint, but did not receive a reply.

On April 7, 2006 Braker advised the Law Society by telephone that he was scheduled for urgent surgery on April 17, with a four-week recovery period. The Law Society extended time for Braker's response to the clients' complaint to May 29, 2006. On May 31, Braker wrote to the Law Society, advising that he had returned to work full time and that he would respond to the complaint by letter during the following week. Braker did not do so.

On June 13, June 27 and July 12, 2006 the Law Society wrote to Braker, repeating the request for his response to the clients' complaint originally set out in the society's letter dated February 14, 2006. Braker did not reply.

On October 16, 2006 the Law Society issued a citation against Braker, alleging that he had failed to respond to the society's letters regarding the clients' complaint, and that he had failed to reply to another lawyer's correspondence.

Verdict

Braker admitted he had failed to respond to the Law Society's letters regarding his clients' complaint, and to another lawyer's correspondence. Braker also admitted those failures amounted to professional misconduct. The panel accepted Braker's admissions.

Penalty

Braker submitted that he has a long history of contribution to the public and to the Law Society, and that his admitted misconduct was out of character and caused by depression.

The panel noted one of the counts in the citation addressed a failure to respond that occurred just a few days after a conduct review addressing Braker's failure to respond to counsel in a litigation matter. The panel also noted that previous conduct reviews and a previous discipline hearing had imposed remedial conditions on Braker, without apparent effect.

The panel stressed that the purpose of the penalty in professional discipline is not to punish offenders, but rather to protect the public, maintain high professional standards and preserve public confidence in the legal profession. In determining the appropriate penalty in this case, the panel reviewed a number of factors set out in *Law Society of BC v. Ogilvie*, [1999] LSBC 17, stating that the duty to reply to Law Society communications is at the heart of the society's regulation of the practice of law.

The panel ordered that Braker:

1. be suspended for one month, commencing November 1, 2007;
2. provide a substantive response to the Law Society's letter dated February 14, 2006, on or before October 1, 2007;
3. provide within 14 days of the penalty hearing a written undertaking to the Discipline Committee that he will respond in writing, within 14 days, to communication received from the Professional Regulation Department, if such communication requires a response; and
4. pay costs of \$5,550.