

2007 : No. 5 December

## **Heather Catherine Cunningham**

Vancouver, BC

Called to the bar: June 1, 2001

**Discipline hearing** : January 11 and September 14, 2007

**Panel** : Gordon Turriff, QC, Chair, Gerald Lecovin, QC and Dirk Sigalet, QC

**Reports issued** : April 10 (2007 LSBC 17) and October 31, 2007 (2007 LSBC 47)

**Counsel** : Jaia Rai for the Law Society; F.A. Schroeder for Ms. Cunningham

### **Facts**

In 2005, Heather Catherine Cunningham provided services to NI under a Legal Services Society retainer. NI complained about Cunningham's quality of service and the Legal Services Society (LSS) began investigating.

Between April 2005 and May 2006, Ms. Cunningham failed to respond to several LSS inquiries regarding the service complaint. The LSS complained to the Law Society on December 7, 2005 about Ms. Cunningham's failure to respond. Ms. Cunningham then failed to respond to the Law Society's request to set a date for a conduct review. She ignored repeated communications from both the LSS and the Law Society.

On August 30, 2006 the Law Society cited Ms. Cunningham for failing to respond to a request to set a date for a conduct review and for failing to respond to communications from the LSS and the Society regarding NI's complaint. Ms. Cunningham admitted that she failed to respond to communications from both.

### **Verdict**

The panel said that in order to avoid a finding of professional misconduct a lawyer must show illness that would render him or her incapable of forming the intention not to respond. They considered several traumatic experiences that affected Ms. Cunningham before and during the period of the LSS and Society requests, but found that these did not demonstrate that she was unable to respond.

They noted that Ms. Cunningham had sought help for depression and anxiety and her physician's report indicated that she was being successfully treated. They also noted that she had a conversation with a Benchler that indicated that she realized she had to deal with the correspondence. And she was able to run her practice and handle a small caseload during this period. Considering these circumstances, the panel found Ms. Cunningham guilty of professional misconduct.

### **Penalty**

The panel noted that the Law Society must be able to ensure that lawyers respond promptly to investigations in order to effectively regulate the legal profession.

The panel noted that Ms. Cunningham's transgression was a first and isolated event. Accordingly, the panel agreed that a suspension would not be appropriate. They ordered a \$2,000 fine and costs of \$5,000 to be paid within 18 months, noting that due to Ms. Cunningham's financial circumstances payment of any fine

and costs would be a significant deterrent.