

2008 LSBC 07

Report issued: March 10, 2008

Oral Reasons: February 14, 2008

Citation issued: November 7, 2007

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

Donald Eric Linge

Respondent

Decision of the Hearing Panel

Hearing date: February 14, 2008

Panel: G. Glen Ridgway, QC, Chair, Thelma O'Grady, Robert Brun, QC

Counsel for the Law Society: Maureen Boyd

Counsel for the Respondent: James Carfra, QC

Background

[1] On November 7, 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 of British Columbia 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:

In representing the vendor [company] in a real estate transaction, you were bound by undertakings contained in a letter from Richard Parr dated May 9, 2000, which included the following:

" These funds are provided to you on your undertakings:

...

(b) to discharge Easement [number] as against Lots C and D and to provide registration particulars in due course; ..."

You breached this undertaking when you accepted the funds but did not discharge this Easement in a timely manner, or at all.

[2] The requirements for service of this citation upon the Respondent, pursuant to Rule 4-15, were admitted.

[3] This citation came before this Panel as a conditional admission of a disciplinary violation and consent to a specific disciplinary action pursuant to Rule 4-22 of the Law Society Rules. The Respondent admitted that he had professionally misconducted himself and consented to the following disciplinary action:

(a) a fine in the amount of \$3,000; and

(b) costs in the amount of \$2,000.

Statement of Agreed Facts

[4] A Statement of Agreed Facts was filed in these proceedings. The Statement of Agreed Facts provided as follows:

1. On July 13, 1977, the Respondent was admitted to the Bar of British Columbia.
2. From May 1, 2002, the Respondent has practised as a sole practitioner in Victoria, British Columbia. He previously practised with Linge, Carr, & Buchan from 1981 to September, 2001.
3. In or about 2000, the Respondent was retained to act in a real estate transaction by the vendor, [company] (the " Vendor"). In this transaction, the Vendor sold property, including Lots A, C and D of Section [number], [District], Plan [number] (together, the " Properties") to the City of L (the " Purchaser").
4. An Easement was registered as a charge against the title to each of the Properties under [number] (the " Easement"). The Easement provided driveway access to I Road for the benefit of the dominant tenement and its terms provided that it would be released at such time as alternate road and services access to I Road had been constructed. The Easement was not a permitted charge on title to the Properties pursuant to the contract of purchase and sale between the Vendor and the Purchaser.
5. On or about May 5, 2000, Richard Parr of Lidstone Yang Anderson wrote to the Respondent regarding the closing procedure in the sale of the Properties. In this letter Mr. Parr advised that he was seeking instructions in respect of the Easement registered against Lots C and D of the Properties.
6. On or about May 9, 2000, Richard Parr wrote to the Respondent, enclosing a copy of a trust cheque made payable to Linge, Carr & Buchan in trust, in the amount of \$207,994.52 (the " Funds"), which Funds had been deposited to the trust account of Linge, Carr & Buchan at CIBC, and further advising that the Funds were provided to the Respondent on his undertaking, *inter alia*:

 (a) [sic] to discharge Easement [number] as against Lots C and D and to provide registration particulars in due course.

 (the " Undertaking")
7. On or about May 17, 2000, the Respondent submitted to the Land Title Office an application to discharge the Easement from the Properties.
8. On or about May 23, 2000, the Land Title Office issued a Notice Declining to Register in respect of the application to discharge the Easement from the Properties.
9. Because he does not have his old files, the Respondent cannot be precise about when the funds were released from trust but says that they were undoubtedly released between May 17, 2000 and prior to notification on May 23, 2000 that the application to discharge the Easement was declined.
10. On or about May 25, 2000, the Respondent advised Mr. Parr by fax that he had received a "

defect notice" from the Land Title Office with respect to the application to discharge the Easement. In this fax he wrote:

In order to discharge the Easement we will need all parties to sign. Do you wish us to do so? We will, if you wish, to ensure our undertaking is fulfilled. Please advise.

11. Mr. Parr did not release the Respondent from the Undertaking.

12. On or about July 25, 2000, Mr. Parr wrote to the Respondent by fax requesting when he could expect to receive discharge particulars in respect of the Easement.

13. On August 17, 2000, the Respondent advised Mr. Parr in writing that he was preparing a new discharge for all parties to sign.

14. On or about February 2002, the Respondent commenced to practise law as a sole practitioner. He had been expelled from his previous partnership in September 2001, and was unable to take or obtain a copy of the file related to this matter.

15. On or about October 29, 2002, Mr. Parr wrote to the Respondent regarding the discharge of the Easement, in which Mr. Parr requested that the Respondent "attend to this matter without delay" and further wrote:

Please also provide us with a letter setting out the steps you will take, and the dates by which you will complete the steps, to expeditiously obtain discharge of the [E]asement from the owners of the 9 lots no longer owned by the [Vendor].

16. Following this letter dated October 29, 2002, Mr. Parr and the Respondent spoke by telephone on at least two occasions in 2002 in which the Respondent advised Mr. Parr that he was taking steps to discharge the Easement.

17. On or about January 8, 2007, Francesca Marzari, a lawyer at Lidstone, Young, Anderson, called the Respondent and spoke to him by telephone regarding discharge of the Easement.

18. On or about February 14, 2007, Ms. Marzari made a complaint (the "Complaint") to the Law Society in respect of the Respondent's failure to comply with his Undertaking to discharge the Easement.

19. On or about February 16, 2007, the Respondent responded to the Law Society with respect to the Complaint. In this letter the Respondent stated that:

I advise that this transaction completed when I was in my former practice. As a result of not having any of my files from my previous practice I confirm that I did not have any of the information required to complete this matter. I do advise that I have requested from Mr. Parr, on at least [sic] two occasions, material from him in order that I may conclude the undertaking as set out in the original correspondence and documentation.

The Respondent also confirmed that he would take steps to conclude this matter and fulfill the Undertaking.

20. The Respondent provided further written responses to the Law Society on March 20, 2007, April 16, 2007, May 8, 2007 and June 28, 2007.

21. In May 2007, the Discipline Committee directed that the Respondent undergo a Practice Review, which was conducted May 17, 2007 and reported upon on May 31, 2007. The Respondent related that he had been undergoing a marriage breakdown and financial difficulties for some time in the 1990s but, by 2000 and 2001, his life was essentially in chaos. [Personal information of a third party deleted.] He was also undergoing serious financial problems. In addition, after returning from a vacation in September 2001, he was in effect dismissed from the partnership and locked out of the premises. All of this is more particularly recited in the Respondent's letter to the Law Society of June 28, 2007.

22. The Respondent also points out that the failure to discharge the Easement which underlies the breach of undertaking complaint here caused no hardship. The purpose of the Easement was to enable the City of L, as grantee, access to I Road until such time as the grantee had constructed an alternative road or service access. This, in fact, was accomplished by the City. This is not offered as an excuse for his breach of undertaking but simply to point out that no harm has been done.

23. In June 2007, the Respondent engaged, at his own expense, Richard Margetts, QC, to make application to the Court for a discharge of the easement pursuant to Section 35 of the *Property Law Act* on the basis that the Easement is now obsolete. In light of the acknowledgment of the City of L aforesaid that they consent to the removal of the Easement, it is anticipated that the application will be granted but the matter has become very complex by reason of the fact that both the dominant and servient properties have become subdivided into a significant number of parcels. Richard Margetts advises that, as a result, it will likely be several months before this matter is finally resolved.

24. It should also be noted that there was no further follow-up regarding the discharge of the Easement from Lidstone, Young, Anderson from December 2002 until Ms. Marzari's complaint of January 8, 2007.

25. The Respondent admits that in the course of representing the Vendor [company] in a real estate transaction, he was bound by an undertaking contained in the letter dated May 9, 2000 from Richard Parr, a term of which was that he discharge Easement [number] as against Lots C and D of the Properties and provide registration particulars in due course. The Respondent admits that he breached his Undertaking when he disbursed the funds but did not discharge the Easement. He admits that between late 2002 and February 2007 he took no significant steps to fulfill the Undertaking by discharging the Easement. He admits that this breach of undertaking constitutes professional misconduct.

[5] After considering the circumstances set out in the Statement of Agreed Facts and having heard the submissions of counsel, the Panel accepts the admission and finds the Respondent guilty of professional misconduct.

[6] The Panel finds the penalty proposed by the Respondent, and recommended by the Discipline Committee, to be appropriate in all of the circumstances.

[7] It is accordingly ordered that the Respondent:

- (a) pay a fine in the amount of \$3,000; and,

(b) pay costs in the amount of \$2,000,

both the fine and costs payable at \$1,000 per month commencing on April 1, 2008.

[8] The Executive Director is instructed to record the Respondent's admission on the Respondent's Professional Conduct Record.

2008 LSBC 12
Corrigendum Issued: April 10, 2008
Report issued: March 10, 2008
Citation issued: November 7, 2007

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

Panel: G. Glen Ridgway, QC, Chair, Thelma O'Grady and Robert Brun, QC

Counsel for the Law Society: Maureen Boyd

Counsel for the Respondent: James Carfra, QC

[1] The Panel makes the following correction to the Decision of the Hearing Panel, issued March 10, 2008, by revising paragraph [7] as follows:

[7] It is accordingly ordered that the Respondent:

(a) pay a fine in the amount of \$3,000; and

(b) pay costs in the amount of \$2,000,

both the fine and costs payable at \$1,000 per month commencing on April 1, 2008.