

2008 LSBC 21

Report issued: July 14, 2008

Oral Reasons: June 20, 2008

Citation issued: April 24, 2008

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

Bert Donald Currie

Respondent

Decision of the Hearing Panel

Hearing date: June 20, 2008

Panel: G. Glen Ridgway, QC, Chair, Emily Reid, QC, Robert D. Punnett

Counsel for the Law Society: Eric Wredenhagen

Appearing on his own behalf: Bert Donald Currie

Background

[1] On April 24, 2008, 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 on the direction of the Chair of the Discipline Committee. The citation directed that there be an inquiry into the conduct of the Respondent regarding the following:

1. You failed to reply promptly or at all to communications from the Law Society concerning its investigation of the complaint of JW, contrary to Chapter 13, Rule 3 of the *Professional Conduct Handbook*, and in particular you failed to respond substantively to letters dated November 26, 2007; December 18, 2007; January 3, 2007; January 15, 2008 and January 24, 2008.

[2] The Respondent admitted that the citation was properly issued and served pursuant to the requirements of Law Society Rule 4-15.

[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:

1. a fine in the amount of \$1,500; and
2. costs in the amount of \$1,000.

Agreed Statement of Facts

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

1. The Respondent was called to the Bar of British Columbia on May 12, 1981.
2. From May 1, 1999, the Respondent has practised as Donald B. Currie at Donald Currie

Law Office in Fort St. John, British Columbia.

3. On October 19, 2007, a client of the Respondent (" JW") filed a written complaint to the Law Society about the Respondent (the " Complaint"). The Complaint alleges as follows:

- (a) JW consulted the Respondent on May 11, 2007 in connection with JW' s arrest;
- (b) following the consultation, JW provided the Respondent with a retainer in the amount of \$750 (the " Retainer") as well as two post-dated cheques in the amounts of \$750 and \$500, respectively (the " Post-Dated Cheques");
- (c) a few days after his consultation with the Respondent, JW was advised by the police that he would not be charged with the offence for which he had been arrested and in respect of which he had consulted the Respondent;
- (d) JW subsequently attended at the Respondent' s office at which time the Post-Dated Cheques were returned to him. He was also advised by the Respondent' s assistant, MO, that either part or all of the Retainer would be returned; and
- (e) over the next several months, JW initiated contact on several occasions – by telephone, fax and personal visit – with the Respondent' s office regarding receiving either a statement of account and a partial return of the Retainer, or the complete return of the Retainer.

4. By November 2007, JW had received neither a statement of account nor a return of the Retainer. He subsequently filed the Complaint with the Law Society.

5. On November 22, 2007, Neil Hain, staff lawyer with the Law Society' s Professional Conduct Department, commenced his investigation into the complaint.

6. On November 22, 2007, at 4:40 p.m. (5:40 p.m. in Fort St. John), Mr. Hain attempted to contact the Respondent by telephone. The Respondent' s phone line was not answered and there was no answering machine to leave a message or a page.

7. On November 23, 2007, at 11:28 a.m. (12:28 p.m. in Fort St. John), Mr. Hain attempted to contact the Respondent by telephone. The Respondent' s phone line was not answered and there was no answering machine to leave a message or a page.

8. Mr. Hain made notes to file regarding his attempts to contact the Respondent.

9. On November 26, 2007, Mr. Hain wrote to the Respondent enclosing JW' s complaint that trust funds were being improperly withheld and advising of his previous attempts to reach the Respondent by phone. The letter requested a response within two weeks. No response was provided by the Respondent.

10. On December 18, 2007, Mr. Hain wrote again to the Respondent requesting a reply to his previous correspondence.

11. On December 18, 2007, Mr. Hain received a voice mail message from the Respondent advising that he had received the letter of November 26, 2007 and asking that Mr. Hain return his call.

12. On December 19 and 20, 2007, Mr. Hain attempted to reach the Respondent several times during the day, without success. The phone was not answered and there was no answering machine. Mr. Hain made notes to file regarding his attempts to contact the Respondent.

13. On January 3, 2008, Mr. Hain wrote a further letter requesting a reply to his letters of November 26 and December 18, 2007. The letter also drew the Respondent's attention to Chapter 13, Rule 3 of the *Professional Conduct Handbook* stating that a lawyer must reply promptly to any communication from the Law Society.
14. On January 15, 2008, Mr. Hain attempted once again to reach the Respondent and was able to speak with his assistant, MO, who advised that the Respondent was not in the office and that she was unable to provide Mr. Hain a specific time when he would be returning.
15. MO confirmed that the Respondent had received all of the Law Society's correspondence to date.
16. MO stated that the office was intending to provide JW his refund but was waiting for updated contact information as they understood he relocated. MO observed that the Complaint contained JW's new address and that this should assist in expediting the forwarding of funds to JW.
17. Mr. Hain advised MO that he required the Respondent's written response to the complaint and that his failure to deliver a timely response would result in the matter going before the Discipline Committee. Mr. Hain suggested a deadline of January 28, 2008.
18. On January 15, 2008, Mr. Hain wrote a further letter to the Respondent seeking a response to his previous letters of November 26 and December 18, 2007, and January 3, 2008. The letter included a warning that failure to respond to the Law Society would result in the matter being referred to the Discipline Committee with a recommendation for a citation.
19. The Respondent did not respond to the January 15, 2008 letter by the requested date of January 21, 2008 or at all.
20. On January 24, 2008, Mr. Hain wrote a final letter to the Respondent requiring his response on or before January 28, 2008, and included a warning that failure to meet that deadline would result in the matter being referred to the Discipline Committee.
21. The Respondent did not respond to the January 24, 2008 letter by the requested date of January 31, 2008 [sic] or at all. Save and except for his voice mail message of December 18, 2007, the Respondent made no response of any kind to any of the requests for a response from the Law Society.
22. The Respondent admits that his conduct in failing to respond promptly or at all to letters from the Law Society dated November 26, 2007; December 18, 2007; January 3, 2007; January 15, 2008 and January 24, 2008 was contrary to Chapter 13, Rule 3 of the *Professional Conduct Handbook*, and constitutes professional misconduct.

[5] The failure of a lawyer to reply to communications from the Law Society is a serious matter. Often the matter that originated the complaint does not proceed to a discipline panel, but what does proceed is a citation for a lawyer's failure to respond to communications with the Law Society with respect to the original complaint.

[6] In *Law Society of BC v. Dobbin*, [1999] LSBC 27, the Benchers stated as follows:

While it is true that the duty to reply is only found explicitly set out in Chapter 13, Rule 3, of the *Professional Conduct Handbook* it is a cornerstone of our independent, self-governing

profession. If the Law Society cannot count on prompt, candid, and complete replies by members to its communications it will be unable to uphold and protect the public interest, which is the Law Society's paramount duty. The duty to reply to communications from the Law Society is at the heart of the Law Society's regulation of the practice of law and it is essential to the Law Society's mandate to uphold and protect the interests of its members. If members could ignore communications from the Law Society, the profession would not be governed but would be in a state of anarchy.

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

[8] With respect to penalty, the Panel has considered the guidelines listed in *Law Society of BC v. Ogilvie*, [1999] LSBC 17. In particular the need for general deterrence is given considerable weight.

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

[10] It is accordingly ordered that the Respondent:

1. pay a fine in the amount of \$1,500; and
2. pay costs in the amount of \$1,000,

both fine and costs to be paid in monthly instalments of \$500, commencing August 1, 2008.

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