

2008 LSBC 32

Report issued: March 14, 2008

Corrigenda issued: September 29, 2008

Citation issued: August 27, 2007

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

**Donald Andrew Lyons**

Respondent

**Corrigenda**

Panel: Kathryn A. Berge, QC, Chair, Anna K. Fung, QC, Thelma O'Grady

Counsel for the Law Society: Maureen S. Boyd

Appearing on his own behalf: Donald A. Lyons

[1] The Panel makes the following corrections to the Report on Facts and Verdict issued March 14, 2008 by replacing the paragraphs corresponding to the numbers indicated with those that appear below:

[14] The Respondent admitted that the information reported to the Law Society in the August 4 Report and the initial months of the ensuing investigation was incorrect in two respects:

(a) the August 4 Report set out that he had accepted two amounts of cash in violation of the " No Cash Rule" but he misstated the amounts of cash actually received on each occasion insofar as:

- i. on April 10, 2006 he received CDN \$9,000 Canadian funds in addition to the US \$32,000 reported; and
- ii. on June 5, 2006 he received CDN\$14,000 rather than the CDN \$9,000 reported.

(b) despite advising the Law Society that he had given his Client a receipt for the first amount of cash received, he has no copy of the receipt and is no longer certain if he provided a receipt.

[25] The Law Society submitted that, by virtue of these 12 publications, by 2006 when the Respondent accepted these prohibited amounts of cash, every member ought to have been aware of the existence of the " No Cash Rule" . Further, the publications demonstrate the importance to the profession of the Rule in protecting solicitor-client privilege and confidentiality as well as the confidence of the Federal Government and the public in the integrity of the profession.

[37] After having his attention drawn to the text of the " No Cash Rule" and his subsequent reading of it, the Respondent made a conscious decision not to abide by the clear wording of the Rule. The Statement of Agreed Facts establishes that an offending transaction within the meaning of the No Cash

Rule occurred in that the Respondent accepted cash in two different currencies from the Client for non-retainer purposes. The deposit of this cash was made by the Respondent only 52 minutes after Ms. Ciolfitto emailed the Rule to him. As he put it, he made a risk assessment and concluded that he could live with the risks of the breach of the Rule. He did not follow up with questions of Ms. Ciolfitto or any other party to clarify his understanding of the Rule.

[38] Further, on June 5, 2006, the Respondent once again accepted cash in excess of the Rule's limits.

[42] In considering the criteria that distinguish a Rules breach from professional misconduct, this Panel takes into account that the conduct for which the Respondent has been cited is serious: there were two separate instances of breaches of the " No Cash Rule" , distinct from each other in time and circumstances, persisting over a period of nine months from the initial acceptances of cash to the point of full disclosure to the Law Society.

[2] In all other respects, the Report on Facts and Verdict remains as stated on March 14, 2008