

2008 : No. 4 October

Raymond William Barton

Quesnel, BC

Called to the bar: September 13, 1983

Non-practising: January 1, 2004

Ceased membership: January 1, 2006

Discipline hearing : September 28, 2006 and February 12, 2007 (Facts and Verdict), July 3, 2008 (Penalty)

Panel : G. Glen Ridgway, QC, Chair, Ralston Alexander, QC and Robert Brun, QC

Report issued : April 27, 2007 (2007 LSBC 24) and August 14, 2008 (2008 LSBC 25)

Counsel : Jaia Rai for the Law Society and no-one on behalf of the Respondent

Facts

On March 8, 2006 the Law Society issued a citation alleging that Raymond William Barton had engaged in unauthorized practice under the Legal Profession Act by performing or offering legal services to WF and his spouse, MF, for a fee, while a non-practising member of the Law Society.

Early in 2004, WF became aware that a mineral claim he purchased from WP was much smaller than he had believed when he registered the bill of sale at the Ministry of Energy, Mines and Petroleum Resources (Mineral Titles Branch) the previous year. In June or July 2004, WF retained Barton to determine the true size of his claim. WF and MF both told the Law Society that WF had gone to see Barton as a lawyer.

In several subsequent meetings, some of which were also attended by MF, WF and Barton discussed various issues relating to verification of the mineral claim, including terms and delivery of payment for Barton's services and for the services of third parties. The testimony before the hearing panel was consistent on the point that Barton had communicated his status as a non-practising lawyer to WF at the time of their first meeting.

However, the testimony was inconsistent regarding the amounts and terms of various payments made by and on behalf of WF, and the terms of engagement between WF, other parties and Barton.

Verdict

The hearing panel determined that when the course of dealings between WF and Barton was viewed as a whole, Barton's actions constituted the unauthorized practice of law, but not professional misconduct.

The panel found it significant that WF initially contacted Barton because he believed him to be a lawyer, and that in their first meeting Barton told WF he expected to be reinstated in the near future. The absence of a formal accounting and the resulting uncertainty regarding Barton's handling of funds paid by WF were noted by the panel as illustrations of the risk to the public caused by the unregulated practice of law.

The panel accepted that Barton clearly told WF that he was not a practising lawyer when he took conduct of the matter, and that he genuinely believed his practising status was about to be reinstated by the Law Society shortly after the retainer commenced. The panel concluded Barton's conduct was not, in all the circumstances, dishonourable or disgraceful and accordingly fell short of professional misconduct.

Penalty

Barton did not appear at the penalty hearing but applied for an adjournment of the proceedings by way of an email transmission. The panel was satisfied that Barton was aware of the July 3, 2008 hearing date since late October 2007 and, therefore, denied Barton's application for an adjournment.

The panel emphasized the seriousness of the unauthorized practice of law given that Barton had previously been called to the Bar. Further, the panel noted that Barton did not appear to acknowledge his misconduct and took no steps to redress the impropriety.

After consideration, the panel ordered that Barton:

1. pay a fine in the amount of \$1,500; and
2. pay costs in the amount of \$7,500.