

2003 LSBC 47

Report issued: December 30, 2003

Oral Reasons: December 15, 2003

Citation issued: July 23, 2003

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

ALAN MARSDEN

Respondent

Decision of the Hearing Panel

Hearing date: December 15, 2003

Panel: Robert W. Gourlay, Q.C., Single Bencher

Counsel for the Law Society: Jean P. Whittow, Q.C.

Counsel for the Respondent: Michael P. Ragona, Q.C.

Background

[1] On July 23, 2003 a citation was issued against the Respondent pursuant to the *Legal Profession Act* and Rule 4-15 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 Schedule to citation, as amended, reads as follows:

Your conduct or competence while representing A.R.T. in an action in the British Columbia Supreme Court brought under the *Family Relations Act* by his wife, A.M.T., as Plaintiff, in which the Plaintiff sought, *inter alia*, sole custody of the child, financial relief, and the Court's approval to relocate with the child to Thunder Bay, Ontario:

1. You failed to serve your client A.R.T. in a conscientious, diligent and efficient manner, so as to provide a quality of service at least equal to that which would be expected of a competent lawyer, contrary to Chapter 3 of the Professional Conduct Handbook, particulars of which include one or more of the following:

(a) With respect to the hearing of the Plaintiff's application for relief (the "Application") heard in B.C. Supreme Court Chambers on April 30, 2002:

i) you failed to inform your client, at any material time, of a proposal of settlement concerning the Application;

ii) before the Court, you entered certain terms of an Order, by consent, when you did not have your client's instructions to do so.

(b) With your consent, the Court made an interim Order on April 30, 2002 and adjourned the

Application to June 18, 2002. During the time period:

- i) you failed to properly inform or advise your client with respect to the terms of the April 30, 2002 Order;
- ii) you failed to properly inform or advise your client as to the issues to be canvassed at the continuation of the Application;
- iii) you failed to obtain instructions as to matters at issue at the continuation of the Application;
- iv) you failed to inform your client or obtain instructions in a timely fashion with respect to an affidavit sworn by the Plaintiff on June 6, 2002 and delivered to you on June 7, 2002 pertaining to the Application.

(c) On June 18, 2002, in B.C. Supreme Court Chambers, after submissions on the Application, the Court made a further Order and also adjourned the Application. You failed to properly inform your client as to the terms of the June 18, 2002 Order, in particular, that the Court had ordered joint guardianship of the child and had ordered that the Plaintiff be allowed to relocate with the child to Thunder Bay, Ontario.

(d) The Plaintiff's Application was then set for July 29, 2003. With respect to the Application heard in B.C. Supreme Court Chambers on July 29, 2002:

- i) you failed to inform your client, at any material time, of a proposal of settlement of the Application;
- ii) during the Application on July 29, 2002, you advised the Court that the proceedings would go "by consent" and then agreed to certain financial terms on your client's behalf, when you did not have your client's instructions to do so;
- iii) during the Application on July 29, 2002, when the Court inquired as to your position regarding relocation of the child, you advised the Court that you had "no specific instructions". You failed to obtain instructions although you knew that the relocation of the child was at issue in the Application. Further, or in the alternative, you knew, or ought to have known, that your client opposed relocation;
- iv) you later signed for entry an Order incorporating all terms pronounced on July 29, 2002 "by consent", including financial terms and a term permitting the Plaintiff to relocate the child to Thunder Bay, Ontario, when you did not have your client's instructions to do so.

2. At the hearing of the Application on June 18, 2002, you advised a Master of the B.C. Supreme Court that you had forwarded the Plaintiff's affidavit received from the Plaintiff's counsel, to your client, but had received no response. You knew or ought to have known that the affidavit had not been sent.

[2] An affidavit of service was filed at Tab 2 of the Book of Documents, which was marked as Exhibit 4.

[3] The citation comes before this Panel as a conditional admission of a disciplinary violation and a consent to specified disciplinary action pursuant to Rule 4-22. By letter dated December 3, 2003, marked as Exhibit 2, the Respondent admits that the allegations contained in the Amended Schedule to the citation are proven

and that they constitute professional misconduct. The Respondent consented to the following disciplinary action

- a suspension of thirty days, beginning December 15, 2003 and continuing up to and including January 15, 2004;
- costs in the amount of \$7,500, payable within two years;
- a referral to the Practice Standards Committee for a practice review at the Respondent's cost

and this outcome was recommended to the Panel by counsel for the Law Society on the instructions of the Discipline Committee.

[4] An Agreed Statement of Facts was filed as Exhibit 3 in these proceedings.

Decision

[5] After considering the circumstances as set out in the Agreed Statement of Facts and after hearing the submissions of counsel, the Panel finds that the Respondent professionally misconducted himself. The Panel further finds the penalty imposed by the Respondent and recommended by the Discipline Committee to be appropriate in all of the circumstances.

[6] It is accordingly ordered that the Respondent will be suspended for one month, beginning December 15, 2003 and continuing up to and including January 15, 2004, and will pay costs of the proceedings in the amount of \$7,500, payable within two years of this decision. The Respondent will undergo a practice review at his own cost.

[7] The Executive Director is instructed to record this finding of professional misconduct on the Respondent's Professional Conduct Record.

[8] Publication of this finding is to be made to the profession in the normal course.