

2008 LSBC 36

Report issued: November 25, 2008

Citation issued: January 29, 2008

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

Brian Borthwick Norton

Respondent

Decision of the Hearing Panel on Penalty

Hearing date: November 10, 2008

Panel: G. Glen Ridgway, QC, Chair, June Preston, Ronald Tindale

Counsel for the Law Society: Maureen S. Boyd

Appearing on his own behalf: Brian B. Norton

Background

[1] This Panel had determined, subsequent to a hearing held the 8th day of May, 2008, that the Respondent, Brian Borthwick Norton, had breached the Rules of the Law Society by accepting cash in an amount exceeding \$7,500.00, contrary to Rule 3-51.1 of the Rules of the Law Society of British Columbia. The Panel determined that the conduct of the Respondent was not such as could be characterized as professional misconduct.

[2] The Panel notes that this provision of the Rules is an important and critical provision for the legal profession in Canada. This Rule is intended to ensure that lawyers do not inadvertently assist in money laundering transactions. It takes the place of the mandatory reporting rules of the Federal Government respecting large cash deposits and suspicious transactions that apply to other professionals but conflict with lawyers' duty of confidentiality to their clients. Accordingly, the importance of this Rule and its enforcement must not be understated.

[3] However, in contrast, the Law Society and the Respondent both stressed these mitigating factors with respect to the conduct of the Respondent:

1. There was no *mala fides* on the part of the Respondent.
2. There was no harm to the client as a result of the Rule breach.
3. The Respondent was confused about the application of the Rule, but took steps immediately to determine what his obligations were and took steps immediately to rectify the situation.
4. The Respondent self-reported this breach of the Rules to the Law Society.
5. The Respondent promptly returned the funds to his client, thereby ensuring that no " money

laundering" could actually have occurred.

6. The Respondent ceased to act for the client on the transaction, and as such, gained no benefit from his breach of the Rules.

[4] It is clear that the Respondent took steps to meet his obligations once he determined that he had erred by accepting cash in excess of the amount permitted by the Law Society Rule. He was initially confused as to the application of the Rule, but took steps to overcome that misunderstanding.

[5] The Respondent has been practising law since 1968 and does not have a professional misconduct record.

[6] The Respondent has a modest real estate conveyancing practice, which he indicates has slowed in the present economic circumstances.

[7] The Respondent was successful in defending himself at the hearing on May 8, 2008, against the allegation of professional misconduct for accepting cash in excess of the amount permitted under the Rules. He was found to have breached the Rules.

Decision

[8] In the circumstances, the Panel finds that the appropriate penalty is a fine of \$500.00 and an award of costs in favour of the Law Society in the sum of \$500.00. The Respondent will have six months to pay these amounts.

[9] There will be publication of this determination as required by Rule 4-38.