

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

Shawn MacDonald

Respondent

Decision of the Hearing Panel

Hearing date: December 8, 2005

Panel: Patricia Schmit, Q.C., Chair, William Sullivan, Q.C., Gavin Hume, Q.C.

Counsel for the Law Society: Brian McKinley

Counsel for the Respondent: Herman Van Ommen

Background

[1] On June 8, 2004, 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 citation, as amended, directed that this Panel inquire into the Respondent's conduct as follows:

1. Your breach of Rule 3-63(1) in failing to record your receipt of funds from your clients Mr. and Mrs. V. between February 24, 2001 and June 3, 2001.

[2] This citation comes before this Panel as a conditional admission of a disciplinary violation and consent to specific disciplinary action pursuant to Rule 4-22. The Respondent admitted that he breached Law Society Rule 3-63 and consented to the following disciplinary action:

1. a fine in the amount of \$1,500;
2. costs in the amount of \$2,500, and
3. a practice condition that Mr. MacDonald retain a certified general accountant or chartered accountant to review his books and records and provide a report to the Law Society on a quarterly basis to confirm that he is complying with Rules 3-51, 3-59 and 3-63 for a period of two years.

Agreed Statement of Facts

[3] An Agreed Statement of Facts was filed as Exhibit 2 in these proceedings. It provides as follows:

1. Shawn M. MacDonald was called to the bar in British Columbia on September 1, 1989.
2. From his date of call to January 31, 1998 Mr. MacDonald practiced at Ferguson Gifford. From

February 1, 1998 he practiced as a sole practitioner until December 31, 2001 when he applied to become a non-practising member. On December 1, 2004 Mr. MacDonald resumed practice as a sole practitioner.

3. On August 13, 1998 Shawn MacDonald was the victim of a home invasion robbery in his residence. Two men broke into his apartment, and threatened, assaulted and restrained him when he confronted them.

4. From September 1999 until August 2001 Shawn MacDonald commenced part-time practice on contract at Watson Goepel Maledy as part of a pre-paid legal services plan, in addition to his sole practice.

5. In February 2001, Mr. MacDonald was retained by L.V. to represent her in a custody dispute involving her children. L.V. was a member of the Watson Goepel Maledy pre-paid legal services plan.

6. Between February 24, 2001 and July 31, 2001, Mr. MacDonald received funds from his client L.V. and her husband M.V. in cash.

7. Mr. MacDonald failed to record the receipt of funds from L.V. and M.V.

8. There is a dispute between Mr. MacDonald and L.V. about whether he received payments totaling \$11,360 in cash on four separate occasions as she insists or whether he received payments totaling \$10,287.28 in cash on two separate occasions as he insists.

9. Mr. MacDonald admits that he did not record the receipt of the funds he received from M.V. and L.V.

10. Mr. MacDonald admits that his failure to record receipt of the funds from M.V. and L.V. was a breach of Law Society Rule 3-63.

[4] After considering the circumstances set out in the Statement of Facts, and having heard the submissions of counsel, the Panel accepts the admission and finds that the Respondent breached Law Society Rule 3-63.

[5] It is accordingly ordered that the Respondent:

(a) pay a fine in the amount of \$1,500;

(b) pay costs in the amount of \$2,500, both the fine and costs payable by March 30, 2006; and

(c) will be subject to a practice condition that will continue for a period of two years, which is that Mr. MacDonald will retain a certified general accountant or chartered accountant to review his books and records commencing January 1, 2006, and will provide quarterly reports to the Law Society, the first one due 30 days after March 31, 2006, and in that pattern for the following two years, to show that he is complying with Rules 3-51, 3-59 and 3-63.

[6] The Executive Director is instructed to record the finding of breach of Law Society Rules on the Respondent's Professional Conduct Record, to impose the disciplinary action and to inform the complainant of the disposition.