

2009 LSBC 10

Report issued: April 01, 2009

Citation issued: December 15, 2006

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

Lawrence Everett Pierce

Respondent

**Decision of the Hearing Panel
on Facts and Verdict**

Hearing date: December 9, 2008

Panel: Gavin Hume, QC, Chair, Leon Getz, QC, Bruce LeRose, QC

Counsel for the Law Society: Maureen Baird

Counsel for the Respondent: David Crossin, QC

Background

[1] On December 15, 2006, a citation was issued against the Respondent pursuant to the *Legal Profession Act* and Rule 4-13 of the Law Society Rules by the Corporate Secretary of the Law Society of British Columbia on the direction of the Chair of the Discipline Committee.

[2] The citation directed that the Panel inquire into the Respondent's conduct as follows:

1. While acting for DC in Supreme Court of British Columbia proceedings against SL Co., you, without obtaining the informed consent and instructions from DC, advanced claims that SL Co.:
 - (a) misled the Plaintiff and five other "similar fact" claimants by misrepresenting medical and other expert reports concerning total disability;
 - (b) had a corporate strategy to avoid payment of meritorious claims; and
 - (c) paid financial bonuses to their employees to secure participation in the scheme from the claims monies saved

thereby exposing her to the risk that an award of increased costs or special costs might be made against her.

2. In representing your client DC with respect to the claims described in count 1, you failed to serve your client 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 in a similar situation. In particular, you failed to disclose all relevant information to DC and failed to candidly advise DC about the position of the matter, contrary to Chapter 3, Rule 3 of the *Professional Conduct Handbook*.

[3] At the outset of the hearing, counsel for both parties agreed that, despite the way the citation was drafted, the Panel should only make one finding concerning professional misconduct for the conduct alleged in the Schedule attached to the citation.

[4] The requirements for service of the citation upon the Respondent, pursuant to Rule 4-15 of the Law Society Rules, was admitted by counsel for the Respondent.

[5] The Respondent did not attend the hearing but his counsel, David Crossin, QC, was present. Counsel for the Law Society was content to proceed in the absence of the Respondent.

[6] A Statement of Agreed Facts ("SAF") was filed as Exhibit 2 in these proceedings. At the hearing, the Panel asked for submissions on what constituted professional misconduct. A submission on behalf of the Law Society dated March 10, 2009 was received and has now been considered by the Panel. Counsel for the Respondent, having had the opportunity to review the Law Society's submissions, indicated that he had no further submissions over and above the admissions that had been filed.

[7] The material facts as set out in the SAF are that the Respondent was retained by his client to commence an action against SL Co. for failure to pay his client disability payments. The pleadings the Respondent prepared in advancing this action alleged bad faith against SL Co. as well as the allegations set out in Count 1 (above). All claims against SL Co. were subsequently dismissed by the Court with scale 3 costs awarded against DC and increased costs awarded against the Respondent personally.

[8] The Respondent admits in the SAF that he failed to fully and properly advise his client concerning the issue of costs in the event her claims were unsuccessful and, in particular, failed to advise his client of the risk of an award of increased costs or special costs. The Respondent further admits that he proceeded in advancing the Plaintiff's claim and arguments without the informed consent and instruction of his client, contrary to Chapter 3, Rule 3 of the *Professional Conduct Handbook*.

Issue and Analysis

[9] Section 38(4) of the *Legal Profession Act* states:

After a hearing, a panel must do one of the following:

(a) dismiss the citation;

(b) determine that the respondent has committed one or more of the following:

(i) professional misconduct;

(ii) conduct unbecoming a lawyer;

(iii) a breach of this Act or the rules;

(iv) incompetent performance of duties undertaken in the capacity of a lawyer

(v) if the respondent is not a member, conduct that would, if the respondent were a member, constitute professional misconduct, conduct unbecoming a lawyer, or a breach of this Act or the rules;

(c) make any other disposition of the citation that it considers proper.

[10] It is for us to decide whether the facts as established support a finding of professional misconduct as set out in s. 38(4)(b)(i) or of incompetent performance of duties undertaken in the capacity of a lawyer as set out in s. 38(4)(b)(iv).

[11] Counsel for the Law Society has referred us to two previous hearing panel decisions presumably as precedents for our consideration: *Law Society of BC v. Coglon*, 2006 LSBC 14 and *Law Society of BC v. Jackson*, 2008 LSBC 28. We have not found either decision helpful.

[12] In considering whether to accept the admission of professional misconduct on the part of the Respondent, we have been influenced by the fact that DC was required to hire another lawyer for the purposes of dealing with the order for costs against her; was required to participate at the Court of Appeal level when the Respondent appealed the Court Order for increased costs against him personally; and has commenced a lawsuit against the Respondent seeking indemnification by him.

Decision

[13] We are satisfied that the Respondent's failures have caused his client significant personal upheaval and disruption and obvious financial costs and losses for which she is still seeking redress. The totality of these negative results convinces us that, taken as a whole, " the facts ... disclose a marked departure from that conduct the Law Society expects of its members." See *Law Society of BC v. Martin*, 2005 LSBC 16 at paragraph [171]. That being the case, it is professional misconduct.

[14] Accordingly, we accept the admission of the Respondent and determine that he has committed professional misconduct, pursuant to Section 38(4)(b)(i) of the *Legal Profession Act*.