

2009 : No. 1 April

Brian Borthwick Norton

Kelowna, BC

Called to the bar: October 1, 1968

Discipline hearing : May 8 (Facts and Verdict) and November 10, 2008 (Penalty)

Panel : Glen Ridgway, QC, Chair, June Preston and Ronald Tindale

Report issued : July 29 (2008 LSBC 22) and November 25, 2008 (2008 LSBC 36)

Counsel : Eric Wredenhagen for the Law Society and Brian Borthwick Norton appearing on his own behalf

Facts

Brian Borthwick Norton represented client SL in a real estate transaction. On September 25, 2007 Norton received \$45,000 in cash from SL as part payment of the real estate purchase. He advised the client that any large cash payments made to him would have to be reported under money laundering statutes. Norton deposited the cash into his trust account.

At the time Norton received the cash deposit, the Law Society had issued 12 publications about Rule 3-51.1, the "no cash rule," which states that *a lawyer must not receive or accept an aggregate amount in cash of \$7,500 or more in respect of any client matter or transaction.*

Later that evening, Norton reviewed the reporting requirements for large sums of cash and realized he had misunderstood the rule and breached it by accepting the cash deposit. Realizing his mistake, Norton faxed a letter to the Law Society's Executive Director September 26. Having received no response from the Law Society by September 28, Norton returned the money to his client in cash. He met with his client on October 1 and explained that he had made a mistake in accepting the cash deposit and could not continue to represent her. He then made arrangements to have her file transferred to another law firm.

Verdict

The hearing panel found that, while Norton had committed a breach of Rule 3-51.1, his conduct did not amount to professional misconduct. In reaching this conclusion, the panel noted that Norton acted in good faith in accepting the money and, after realizing his mistake, took all necessary steps to address the error. They also found that Norton's actions did not cause any harm to the client.

Penalty

In their assessment on Penalty, the panel underscored the importance of the "no cash rule," noting that this rule is intended to ensure that lawyers do not inadvertently assist in money laundering transactions. They also noted that Norton had no previous professional misconduct record.

Accordingly, the panel ordered:

1. a fine of \$500; and
2. \$500 in costs.