

2009 : No. 1 April

## **Donald Andrew Lyons**

Vancouver, BC

Called to the bar: July 10, 1979

**Discipline hearing** : January 17 (Facts and Verdict) and October 2, 2008 (Penalty)

**Panel** : Kathryn Berge, QC, Chair, Anna Fung, QC and Thelma O'Grady

**Report issued** : March 14 (2008 LSBC 09), September 29 (2008 LSBC 32) and December 9, 2008 (2008 LSBC 38)

**Counsel** : Maureen Boyd for the Law Society and Donald Andrew Lyons on his own behalf

### **Facts**

This was a matter of first instance, as it was the first citation issued by the Law Society regarding Rule 3-51.1, commonly known as the "no cash rule."

Donald Andrew Lyons was retained by client SC to provide services on behalf of his movie production business. On April 10, 2006 SC delivered US \$32,900 and CDN \$9,000 in cash for deposit into Lyons' trust account. Lyons advised SC that the Law Society had rules about receiving large cash amounts and needed to confirm what those rules were before he could accept and deposit the money.

After receiving the funds but before depositing them, Lyons contacted the Law Society and informed an employee in the Trust Assurance Department that he had received US \$32,000 in cash from a client. The employee drew his attention to Rule 3-51.1. Her note indicated that she used the word "violation"; however, Lyons' evidence was that the employee used the word "exception", which he understood in the context of an exception to his annual trust report, rather than a violation which could result in discipline.

After this telephone call, the employee emailed the text of the "no-cash rule" to Lyons, who received and read it prior to determining to deposit the cash.

On or about June 5, 2006, SC delivered additional cash of CDN \$14,000 to Lyons, which he deposited in two amounts of CDN \$9,000 and CDN \$5,000, then subsequently disbursed the money according to his client's instructions.

On August 4, 2006 Lyons provided the Law Society with a written exception report stating he had received US \$32,000 on April 10 and CDN \$9,000 on June 5. This report prompted correspondence between Lyons and the Law Society, in which the society sought a written explanation as to why cash of \$7,500 or more was received and whether Lyons was still holding the cash in trust.

On September 22, 2006 a staff lawyer in the Professional Conduct Department contacted Lyons to advise him an investigation had commenced regarding the information set out in his exception report and requested a complete written response.

After exchanging multiple letters with the society, Lyons provided a complete written response on January 29, 2007 in which he advised the society he had received more cash than reported in his August 4, 2006 letter: on April 10, 2006 he received and additional \$9,000 and on June 5, 2006 the further amount of CDN \$5,000. Lyons advised that he had incorrectly reported the cash amounts in his report of August 4, as he had not consulted the relevant trust accounting records prior to filing.

Lyons admitted that he was familiar with the legislation that gave rise to the "no cash rule" and had read articles published by the Law Society about the rule since its implementation.

He admitted that he accepted and received cash in breach of Rule 3-51.1, that he read the Rules before depositing the cash into his trust account and that he did so knowingly in breach of the rule. He admitted that doing so constituted professional misconduct.

At the time these events took place, Lyons was experiencing personal difficulties, including problems arising from the termination of his partnership for which he sought assistance from the Law Society.

### **Verdict**

Lyons committed two breaches of Rule 3-51.1 (the "no cash rule") over a period of nine months. These breaches were not unintentional nor purely administrative in nature.

Lyons was sufficiently aware of the "no cash rule." The Law Society published no less than 12 articles about the rule between 2004, when it was first adopted by the Benchers, and 2006, when the alleged behaviour occurred. Lyons admitted he read several of these articles.

Further, Lyons contacted the Law Society about the rule after receiving cash from a client. After reading Rule 3-51.1, Lyons made a conscious decision not to abide by the rule and deposited the money. Approximately two months later, he again accepted additional cash in the amount of \$14,000 from his client on the same matter.

The panel found that Lyons was not frank in his dealings with the society in several respects - with regard to the extent of cash received, in his replies to follow up inquiries, in his August 4, 2006 exception report and in the ensuing months of investigation.

Lyons submitted that, while he was prepared to take responsibility for his actions, the Law Society bore some responsibility for the situation.

While the panel accepted Lyons may not have been fully briefed by the Law Society employee who answered his telephone call, it was ultimately his responsibility to inform himself of the Rules. Further, lack of knowledge about the potential consequences of a breach of the rule is not an excuse for its violation. If there was a misunderstanding of the application of the rule, Lyons did not take any steps to clarify his understanding until he learned the society was investigating the matter.

Lyons' conduct was a marked departure from the conduct the Law Society expects from its members. The panel accepted the respondent's admission of professional misconduct.

### **Penalty**

Lyons acknowledged without reservation that he had made a mistake and was ashamed of his conduct. He apologized to the Law Society and provided assurances it will be the last time he will be disciplined. The panel accepted that Lyons was genuine in his remorse and truly regretted what appear to be uncharacteristic and unfortunate lapses in judgment.

The panel was satisfied that no further specific deterrence is necessary in this case. But with respect to general deterrence, the panel was of the view that in order to ensure the efficacy and purpose of the "no cash rule," the Penalty must signal clearly both to Lyons and to the profession that the rule must be complied with, regardless of the inconvenience to the lawyer or the client.

The Penalty should, as a general rule, be a fine with a sufficient deterrent effect that it prevents other lawyers from treating it as an acceptable cost of doing business.

In light of factors discussed above and considering Lyons' unblemished history and the steps he took to consult the Law Society, the panel agrees that Lyons should be assessed a fine in the lower range of the spectrum.

The panel determined the following Penalty:

1. a fine of \$1,500;
2. costs in the amount of \$2,700.