

2009 LSBC 36

Report issued: December 14, 2009

Citation issued: September 10, 2008

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

Andrew James Liggett

Respondent

Decision of the Hearing Panel on Penalty

Hearing date: November 12, 2009

Panel: Gavin Hume, QC, Chair, David Mossop, QC, David Renwick, QC

Counsel for the Law Society: Maureen Boyd

Counsel for the Respondent: David Taylor

Background

[1] In our decision on Facts and Verdict issued July 14, 2009 (2009 LSBC 21), we found that the Respondent's conduct constituted professional misconduct for numerous breaches of the Law Society Rules relating to accounting records and failure to comply with requests from the Law Society. Specifics of the citation and discussion can be found in our decision on Facts and Verdict.

[2] The Respondent was called to the Bar in 1991 and carries on his business under the name of Sea to Sky Law Corporation.

[3] Between September 2006 and April 2009, Russell Law of MacKay and Company Ltd. conducted a Rule 4-43 Audit and found numerous problems with the Respondent's records.

[4] In his letter of May 22, 2009, Mr. MacKay advised that his review of the Respondent's records from August 1, 2008 to February 28, 2009 showed that the trust bank reconciliations were completed on time and were balanced. He also determined that the GST, PST and employee withholding accounts and the accounts payable ledgers were all current and that accounts receivable ledgers were being maintained. Further, the accounting deficiencies set out in the citation had been rectified for the period February 1, 2004 to January 31, 2008. He noted that " Liggett's books and records for the period February 2004 to January 2008 are substantially in compliance with the Law Society Rules" .

Penalty

[5] Counsel for the Law Society and the Respondent prepared a joint submission with respect to penalty.

[6] The primary purpose of discipline proceedings is the fulfillment of the Law Society's mandate in Section 3 of the *Legal Profession Act*; that is to uphold and protect the public interest in the administration of justice.

[7] The factors considered by the Panel, in determining the appropriate penalty, are set out in the *Law Society of BC v. Ogilvie* [1999] LSBC 17. The primary consideration in this case is specific deterrence and protection of the public interest to ensure that these goals are met.

[8] Further, as noted in *Law Society of BC v. Geller*, 2004 LSBC 24, a degree of oversight for a reasonable period of time will ensure that a "relapse does not occur" and that, if it does, it will minimize the magnitude of any failure.

[9] There was no misappropriation of client trust funds, nor was there any "evidence of harm to any person arising from this misconduct." Nevertheless, the administrative side of the practice of law is important. The Law Society has instituted rules to ensure that the public interest is protected (cf. *Law Society of BC v. Smith*, 2004 LSBC 29), and these must be adhered to. An aggravating factor in this case is that the books and records were out of compliance for three years.

[10] The panel also reviewed the Respondent's Professional Conduct Record, which notes that:

(a) the Respondent was administratively suspended, pursuant to Rule 3-74.1(2) from July 24 to August 24, 2006 for failing to file a satisfactory trust report for the period ending January 31, 2006;

(b) a Practice Review by the Practice Standards Committee was ordered, and on December 7, 2006 a number of recommendations were made to ensure that the Respondent's records were updated and kept current. Further follow-up Practice Reviews were conducted in February 2007 and June 2007, and further recommendations were made; and

(c) on September 4, 2008 the Practice Standards Committee directed that the Respondent provide a debt reduction plan satisfactory to the Practice Standards Department.

[11] Counsel for the Respondent supported the position of Law Society counsel. He felt that the recommended penalty would meaningfully address the problems. He also noted that the Respondent had spent approximately \$50,000 in accounting fees to have books and records corrected. Further, the semi-annual reviews will result in costs of approximately \$3,000 to \$4,000 per review. This would amount to \$6,000 to \$8,000 per year in addition to the penalties, which would be a significant sum. As well, the Respondent has restructured his practice, moved to an office share space arrangement, and has a full-time accountant. He also sold a number of retirement assets and real estate to help meet his financial responsibilities. Nevertheless, he is committed to "repairing the damage and getting his feet back on the ground." He advised that this whole process has had a significant impact on him personally, emotionally and professionally.

[12] The appropriate penalty is set out in our conclusion.

Costs

[13] The Law Society is seeking a significantly reduced amount for costs and is not seeking full indemnity. The costs being requested relate mostly to fees and disbursements incurred by the external forensic accountant who attended at the Respondent's office for a total of 15 days. These costs were further adjusted by the Law Society to reflect the hours billed by the accountant only, and not for administrative services. As well, there was a reduction in the hourly rate charged by the accountant to reflect the costs that would have been incurred had the Law Society been able to conduct a Rule 4-43 investigation itself.

[14] In determining what costs are reasonable, the principles in *Law Society of BC v. Racette*, 2006 LSBC 29 were considered.

Conclusion

[15] As agreed, and accepted by the Panel, the appropriate penalty in this case is:

1. a fine of \$3,000, to be paid in full by October 31, 2010; and
2. a condition on the Respondent's practice, pursuant to s. 38(5)(c) of the *Legal Profession Act*, that he retain a Chartered Accountant or Certified General Accountant who is in good standing to review his books and records every six months for three years and to report in writing to the Law Society whether the books and records of the Respondent's practice are maintained in compliance with Division 7 of Part 3 of the Law Society Rules and, if not, provide a detailed listing of the items of non-compliance, such reports to be provided to the Law Society by:
 - (a) March 31, 2010;
 - (b) September 30, 2010;
 - (c) March 31, 2011;
 - (d) September 30, 2011;
 - (e) March 31, 2012; and
 - (f) September 30, 2012.

The Respondent is responsible for the delivery of these reports to the Law Society and for their cost; and

3. costs in the amount of \$18,000, to be paid in monthly installments of \$750, commencing the month following the issuance of this penalty decision.