

2010 LSBC 07

Report issued: April 07, 2010

Oral Reasons: January 27, 2010

Citation issued: December 21, 2009

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

Bradley Darryl Tak

Respondent

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

Hearing date: January 27, 2010

Panel: David Renwick, QC, Chair, Leon Getz, QC, Thelma O'Grady

Counsel for the Law Society: Eric Wredenhagen

Counsel for the Respondent: Bradley Tak

Background

[1] The Law Society of British Columbia (" Law Society") alleges that the Respondent, Bradley Darryl Tak (the " Respondent"), failed to respond promptly or at all to communications from the Law Society concerning its investigation of a complaint by his client, KP, contrary to Chapter 13, Rule 3 of the *Professional Conduct Handbook*. The *Handbook* states that " a lawyer must reply promptly to any communications from the Law Society."

[2] The Law Society submits that a finding of professional misconduct is warranted.

Issues

[3] The Law Society alleges that the Respondent failed to respond to a letter dated October 29, 2009 and a telephone message left on November 19, 2009.

Preliminary Application

[4] The Respondent brings an application to postpone the hearing, stating that he prefers to have counsel present as a possible penalty from this citation may be suspension. Also, he is awaiting a report that he hopes will contain helpful and remedial recommendations for his practice.

[5] The Law Society argues that this citation was authorized as a summary hearing pursuant to Rule 4-21.1. This Rule authorizes the Panel to " consider facts, verdict, penalty and costs and make one decision respecting all aspects of the proceeding." The objective of this Rule is to allow citations such as " failure to respond to a communication by the Law Society" to be dealt with in an expedient way without the necessity

of a separate and second hearing regarding penalty.

[6] The Panel considered the Respondent's application and held that it is not prepared to adjourn the hearing on both the issues of facts and verdict. Thus, the hearing continued in regard to facts and verdict, and the penalty portion was postponed upon conditions.

Facts and Evidence

[7] The Law Society provided evidence by affidavit as provided for in Rule 4-24.1(3).

[8] The affidavit of Howie A. Caldwell, staff lawyer in the Law Society's Professional Conduct Department, states he was assigned to investigate a complaint made by KP against the Respondent. The substance of the complaint is that KP retained the Respondent in respect of a personal injury matter in or about September, 2008 and provided him with a \$2,000 cash retainer. Since that time, KP complains that the Respondent has failed to respond to his repeated telephone calls and messages. As a result, KP cannot determine what, if any, steps the Respondent has taken on his behalf.

[9] On October 29, 2009, Mr. Caldwell tried to contact the Respondent by telephone four times. Each time the phone did not ring, and there was only dead air.

[10] Ms. Copak, another staff member of the Law Society, also tried to reach the Respondent by telephone on October 22 and 29, 2009 regarding another matter. Ms. Copak reports the Respondent's voice mailbox was full both times. She then wrote to the Respondent on October 29 and e-mailed him on October 30, 2009. Ms. Copak received no reply.

[11] Also on October 29, 2009 Mr. Caldwell wrote the letter to the Respondent that is at issue in this hearing. In it, Mr. Caldwell asked the Respondent a number of questions regarding steps the Respondent had taken on KP's case, and asking for a copy of the client trust ledger setting forth how the Respondent dealt with KP's retainer. The letter also pointed out the section of the *Professional Conduct Handbook* requiring a lawyer to reply promptly to Law Society communications and asked for a response by 9:00 a.m. on November 9, 2009. This letter was personally delivered to the Respondent on October 29, 2009 by Mr. Brownell, the Manager of the Law Society's Audit & Investigation Department.

[12] On November 9, 2009 several things happened. First, another lawyer contacted the Law Society advising that she was retained by KP in his personal injury matter and she had been unsuccessful in reaching the Respondent by telephone to obtain the client file. Second, Ms. Copak advised Mr. Caldwell that she had received a telephone response from the Respondent to her earlier communication on a separate matter. But when Mr. Caldwell subsequently tried to reach the Respondent by telephone on November 9, the voice mailbox was again full. Finally, later that day, the Respondent once again telephoned Ms. Copak, who then transferred the phone call to Mr. Caldwell. The Respondent stated he would respond to the October 29 letter by November 13, 2009 and that he would contact the new lawyer awaiting the client file.

[13] The Respondent did not contact the Law Society on or before November 13, 2009 as he promised. On November 17, Mr. Caldwell again tried to telephone the Respondent but found the voice mailbox to be full. Mr. Caldwell also contacted the new lawyer on the KP case and determined that neither she, nor KP, had heard from the Respondent, notwithstanding she had sent a letter to the Respondent.

[14] On November 18, 2009 Mr. Caldwell again attempted to reach the Respondent by telephone, but his voice mailbox continued to be full.

[15] On November 19, Mr. Caldwell again telephoned the Respondent and this time was able to leave a voicemail explaining that he had been trying to reach him all week and that the voice mailbox had been full.

This is the telephone message that is at issue in this case. Mr. Caldwell stated in his message that the Respondent had failed to fulfill his commitment to provide a response and that this failure was to be reported to the Discipline Committee.

[16] On November 26, 2009 Mr. Caldwell made a phone call to the Respondent, but the voice mailbox was again full. On November 27, Mr. Caldwell wrote the Respondent regarding the complaint and advised him that his failure to respond to the Law Society was being referred to the Chair of the Discipline Committee for review. He also asked the Respondent to provide a response. None was received.

[17] On December 8, 2009 Mr. Caldwell again wrote the Respondent regarding the attempts by new counsel to obtain the KP file. The Respondent did not respond.

[18] On December 10, 2009 the Respondent attended the Law Society building to meet with other staff of the Law Society on an unrelated matter. Mr. Caldwell and Mr. Brownell used that occasion to meet with the Respondent in person. At the meeting the Respondent stated he was not prepared to give a verbal explanation in response to the complaint, but would respond in writing by 5:00 p.m. that day. The Respondent also turned over the KP file but did not include his own notes of communication with the client.

[19] On December 14 at 4:30 p.m., Mr. Caldwell spoke by telephone to the Respondent who stated he was finishing his letter and would be sending it momentarily by e-mail. The e-mail, for some reason, was not received by the Law Society until December 15 at 5:28 a.m., although it was sent on December 14 at 4:45 p.m.

[20] In his letter of December 14 to the Law Society, the Respondent admitted that he had met with KP and received the \$2,000 retainer in cash. However, he failed to fully answer or provide the information requested in the Law Society's October 29 letter. In fact, as of January 29, 2010, the date of this Hearing, he still had not met the demand nor produced any accounting records or documentation setting forth how he dealt with the client's retainer as specifically requested by the Law Society in its letter of October 29, 2009.

[21] The Respondent did not testify at this Hearing nor provide any evidence.

Analysis

[22] In our view, the Law Society has clearly established that the Respondent failed to respond to the communications of the Law Society. This finding is *prima facie* evidence of professional misconduct. The Respondent has not adduced any evidence that would excuse his conduct.

[23] The Benchers stated in the case of the *Law Society of BC v. Dobbin*, [1999] LSBC 27 at para. 20:

20. ... If the Law Society cannot count on prompt, candid and **complete** replies by members to its communications, it will be unable to uphold and protect the public interest, which is the Law Society's paramount duty.

[emphasis added]

[24] The Respondent has not provided any substantive response as to what has happened to the retainer. We do not know if the retainer was used, since no Statement of Account was produced, nor do we know if it was retained or forwarded to the new lawyer.

[25] In these circumstances, we have no hesitation in concluding that the Respondent has committed professional misconduct.

Adjournment

[26] Pursuant to Rule 4-29(5), this Panel adjourns the Hearing as to Penalty on the following conditions:

(a) by 4:00 p.m. on Wednesday, February 3, 2010 the Respondent must provide a copy of his trust ledgers or records and/or any banking records relating to receipt and deposit of the \$2,000 retainer; and

(b) If this condition is not met, the Penalty Hearing will commence on Friday, February 5, 2010. If this condition is met, the Penalty Hearing will commence on April 8, 2010.