

2010 LSBC 11

Report issued: May 11, 2010

Oral Reasons: May 5, 2010

Citation issued: March 26, 2010

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

**Robert John Cuddeford**

Respondent

### **Decision of the Hearing Panel on Facts, Verdict and Penalty**

Hearing date: May 5, 2010

Panel: Kenneth M. Walker, Single Bencher Panel

Counsel for the Law Society: Eric Wredenhagen

Counsel for the Respondent: Robert Cuddeford

## **Introduction**

[1] Robert John Cuddeford (the " Respondent" ) appeared before a single Bencher Panel pursuant to Rule 5-2(2)(b.1) of the Law Society Rules. This was a summary hearing under Rule 4-24.1. The citation in this matter was authorized by the Discipline Committee on January 21, 2010. The Schedule to the citation required a hearing into the Respondent's alleged failure to respond to Law Society communications. The communications were:

(a) letters dated October 27, 2009, November 30, 2009, and December 18, 2009; and

(b) telephone messages left on November 20, 2009, November 23, 2009 and December 16, 2009.

[2] At the hearing the Respondent admitted that he failed to respond to the communications of the Law Society. He testified in the Penalty phase. He explained that the complainant FP (who was not his client) has been difficult and has a history of complaining about the Respondent.

[3] At the conclusion of the hearing, brief oral reasons were given. Professional misconduct was proven for failure to respond. A fine of \$2,000 was imposed. Costs were ordered in the sum of \$1,000. These are the written reasons for those decisions.

## **Background**

[4] On July 24, 2009 the Law Society received a written complaint from FP concerning the Respondent.

[5] On October 27, 2009 staff of the Law Society wrote to the Respondent. Staff requested a written response by November 17, 2009. The first letter was followed by two further letters dated November 30,

2009 and December 18, 2009. Law Society staff advised the Respondent, " You may wish to consider retaining counsel to assist you in this matter." That was wise a suggestion. The Respondent failed to respond in writing to these letters.

[6] Law Society Staff left messages by telephone with the office the Respondent on November 20, 2009, November 23, 2009 and December 16, 2009.

[7] On November 19, 2009 the Respondent called staff at the Law Society to discuss the issue of client confidentiality. He explained in evidence at this hearing that he was concerned that FP had used privileged correspondence from the Respondent as evidence in a claim made in the Provincial Court. The claim resulted in a Judgment against the Respondent in the amount of \$800. This Judgment was later set aside on appeal to the Supreme Court of British Columbia.

[8] The Respondent admits that his failure to respond to Law Society communications was professional misconduct. I agree. He testified that " what I ought to have done is write a letter," and " I have an obligation to respond in writing." He recognized his responsibility to the profession and to the Law Society of British Columbia. He is late to admit his error but his admission shows he recognizes the role of the Law Society and its members.

## **Position of the Parties**

[9] The Law Society submits that failure to respond in a substantive way and in a timely way amounts to professional misconduct.

[10] The Respondent agrees he ought to have responded and failed to respond.

[11] On Penalty, the Law Society seeks a fine of \$2,500 and costs of \$1,500.

[12] The Respondent seeks a lesser fine and reduced costs. He asks for time to pay.

## **Analysis**

[13] Professional misconduct has been proven. The decision by the Respondent not to respond was misguided. His failure hurts the law profession and interferes with the statutory obligation of the Law Society to investigate complaints.

[14] The statements made in *Law Society of BC v. Dobbin*, [1999] LSBC 27 at paragraph 21, 23 and 25 have application to this case:

21. As Bencher Gerald Lecovin, sitting as a one Bencher Hearing Panel, wrote, in Reasons dated April 15, 1999, in the case of *MacDonald*, [1999] LSBC 20, page 3:

Failing to respond promptly is a grave matter, and as has been pointed out, our Rules are there to protect the public. We are a self-governing society, this is a rare privilege which must be constantly earned. To protect the public requires an investigative process which mandates prompt replies from members to inquiries made by the Law Society. The *Peters* case quoted refers to *Artinian v. The College of Physicians and Surgeons* (1990), 73 OR (2d) 204 as authority for the proposition that every professional has an obligation to cooperate with his or her self-governing body in an investigation into their affairs.

23. The Benchers are well aware that responding to Law Society communications may be

irksome or burdensome. For overworked and highly stressed professionals, the task of picking up a file, often a closed or neglected file, and responding to the Law Society is a thankless, unpaid, and, often, time-consuming task. Many times the burden will be compounded by the knowledge that the letter which must be sent will reveal that the lawyer has behaved in a sub-standard or unprofessional way. For many lawyers, the duty to respond clashes with values they apply every day in their practices: the privilege against self-crimination and the right to remain silent. That clash sometimes produces resentment and a temptation to stick one's head in the sand. While the Benchers understand that those sorts of equivocations or rationalizations sometimes paralyze practitioners who are under a duty to respond to the Law Society, the Benchers wish to ensure that members are under no illusions as to their duty to respond nor as to how the Benchers will deal with a failure to discharge that duty: we repeat, responding promptly, candidly and completely to Law Society communications is the cornerstone of our right to self govern.

25. Frequently, the member's failure to respond to Law Society communications is a sequel to a prior, frustrating failure to respond to client communications or to other lawyers' communications. Procrastination in responding to the Law Society, or wilful failure to respond to the Law Society, may be symptomatic of other practice problems involving delay on files or other dereliction of professional duty. ... There is no doubt whatever that a persistent, intransigent failure to respond to Law Society communications brings the legal profession into disrepute. ...

[15] The Respondent chose not to respond because he was concerned his written response might again be used by FP in an action in the Courts. The use of letters or communications are strictly prohibited absent consent or waiver of the privilege referred to in s. 87 of the *Legal Profession Act*. The Respondent was not aware of the extent of that privilege. The Respondent ought to have sought the advice of a lawyer on this issue and provided the appropriate response.

[16] On Penalty, there is evidence that the Respondent has been slow to respond to communications of the Law Society in the past on a related complaint of FP. That is an aggravating feature. In my view, that requires a penalty in the form of a fine, not a reprimand.

[17] The Respondent was called to the Bar in 2001 and has a busy practice. I urge him to take the "Communication Toolkit", which is a resource available to members. I give the Respondent credit for his admissions at the hearing. I accept that he will respond to the letter of October 27, 2009 within the time limited by my order. He should give that letter of response to the Law Society priority over other obligations.

## **Penalty**

[18] I order that the Respondent pay a fine in the amount of \$2,000 and costs in the amount of \$1,000. The hearing took less than 1.5 hours. He must pay the fine and costs by July 31, 2010.

## **Ancillary Order**

[19] I also order the Respondent to respond "promptly, completely and candidly" to the Law Society letter dated October 27, 2009 by May 28, 2010 at 4 pm. Sooner would be better.

[20] I thank counsel for the Law Society for his assistance. I thank the Respondent for his co-operation and admissions during this hearing.