2010 LSBC 12
Report issued: May 14, 2010
Oral Reasons: May 6, 2010
Citation issued: March 15, 2010

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

Douglas Edward Arthur LeBeau

Respondent

Decision of the Hearing Panel on Facts, Verdict and Penalty

Hearing date: May 6, 2010

Panel: Gavin Hume, QC, Single Bencher Panel

Counsel for the Law Society: Maureen Boyd
Appearing on behalf of the Respondent: Michael A. LeBeau

Introduction

[1] A citation in this matter was authorized by the Discipline Committee on February 11, 2010 and was issued against Douglas LeBeau (the " Respondent") on March 15, 2010.

[2] The Schedule to the citation set out the nature of the conduct of the Respondent that was to be inquired into:

> 1. You failed to provide a substantive response to communications from the Law Society concerning its investigation of the complaints of NM, contrary to Chapter 13, Rule 3 of the *Professional Conduct Handbook*, and in particular you failed to respond substantively to letters dated October 1, 2009, October 26, 2009 and/or December 9, 2009.
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> 2. You failed to provide a substantive response to communications from the Law Society concerning its investigation of the complaint of BB, contrary to Chapter 13, Rule 3 of the *Professional Conduct Handbook*, and in particular you failed to respond substantively to letters dated November 3, 2009, December 11, 2009 and/or January 5, 2010.

[3] The citation was served on the Respondent as required by the Rules. The Respondent was to appear 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. Under Rule 4-24.1 evidence may be adduced by affidavits, *inter alia*.

[4] At the commencement of the hearing the Panel was advised that the Respondent had sent an email that morning and shortly before the commencement of the hearing indicating that he had resigned from the Law Society and for health reasons was not intending to attend. The Panel was also advised that the Respondent's brother, who is also a lawyer, had that morning contacted counsel for the Law Society to advise that he would be in attendance but that he could not reach the Law Society's offices until 10:30 a.m.

As a result, the hearing proceeded for the purposes of marking exhibits, which included the citation, affidavits of service and the affidavits of Karen Mok and Ruth Long, both employed as staff lawyers. The matter was then adjourned to await the arrival of counsel for the Respondent and to permit the Panel to review the affidavit material. The Panel indicated that counsel for the Respondent should be given whatever time was required for purposes of reviewing the above-mentioned material.

[5] At the resumption of the hearing later in the morning, counsel for the Respondent indicated that he had had sufficient time to review the material. As a result the matter proceeded, initially for purposes of dealing with the facts and verdict. At the conclusion of that portion of the hearing, brief oral reasons were given finding that the failure of the Respondent to respond to communications from the Law Society was professional misconduct.

[6] The issue of penalty was then dealt with. At the conclusion of the penalty phase of the hearing, a reprimand was imposed and costs were ordered in the sum of $1,500, to be paid on or before May 5, 2011. These are the written reasons for those decisions.

Background

[7] Evidence was adduced by way of the affidavits of Karen Mok and Ruth Long. Both are staff lawyers in the Professional Conduct Department of the Law Society of British Columbia and had personal knowledge of the matters dealt with in their affidavits.

[8] In summary, the affidavit evidence established that the Law Society received complaints from two representatives of a chartered bank (the " Bank"). Those complaints allege that the Respondent was retained by the Bank to prepare and register mortgages on certain properties and that the Respondent had failed to respond to the representatives despite several attempts to contact him to obtain final reports in relation to the activities on behalf of the Bank.

[9] Ms. Mok wrote four letters to the Respondent seeking his response. The evidence also established that the Respondent was aware of at least some of the correspondence and that he was advised by Ms. Mok to respond to the Law Society communications. In addition, in a separate conversation, he was verbally advised that, if he did not respond, the matter would be referred to the Discipline Committee.

[10] In addition, the evidence established that Ms. Long spoke by telephone with the Respondent to advise him of one of the complaints and subsequently also corresponded with the Respondent on several occasions asking for a response to her enquiries.

[11] All of the communications made it clear that a response was requested and necessary. The Respondent did not respond to any of the correspondence or telephone messages. As a result the matter was referred to the Discipline Committee. In addition, the Respondent was personally served with, amongst other things, the affidavits of Karen Mok and Ruth Long and the Brief of Authorities upon which the Law Society was going to rely. This service occurred on March 24, 2010.

[12] The affidavits of Karen Mok and Ruth Long outlined the communications from the Law Society to the Respondent. The authorities provided to the Respondent made it clear that the failure to communicate in response to enquiries from the Law Society could constitute professional misconduct and was a serious matter. The cover letter from the Law Society dated March 24, 2010, which was served upon the Respondent with the affidavits and other material, again discussed the obligation of a lawyer to respond to Law Society communications promptly. Again, no response was received from the Respondent despite the content of the cover letter from the Law Society.

Discussion

[13] The test for professional misconduct is well-established and was discussed in *Law Society of BC* v. *Martin*, 2005 LSBC 16. At paragraph [171] *Martin* states:

> The test that this Panel finds is appropriate is whether the facts as made out disclose a marked departure from that conduct the Law Society expects of its members; if so, it is professional misconduct.

[14] The *Professional Conduct Handbook* ,and in particular Chapter 13, Rule 3, places an obligation on a lawyer to reply promptly to any communication from the Law Society. In *Law Society of BC* v. *Dobbin,* [1999] LSBC 27 at paragraph 25, the Panel stated in part:

> ... it is the decision of the Benchers that unexplained persistent failure to respond to Law Society communications will always be *prima facie* evidence of professional misconduct which throws upon the respondent member a persuasive burden to excuse his or her conduct.

[15] This statement has been followed since in *Law Society of BC* v. *Cunningham*, 2007 LSBC 17 and *Law Society of BC* v. *Tak*, 2009 LSBC 25.

[16] The reason for this conclusion was expressed by the majority of the Benchers on Review in *Dobbin* when they stated:

> 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. The duty to reply to communications from the Law Society is at the heart of the Law Society's regulation of the practice of law and it is essential to the Law Society's mandate to uphold and protect the interests of its members. If members could ignore communications from the Law Society, the profession would not be governed but would be in a state of anarchy.
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> 25. ... There is no doubt whatever that a persistent, intransigent failure to respond to Law Society communications brings the legal profession into disrepute. ...
>
> [emphasis added]

[17] The Panel in *Cunningham*, (supra), expressed it this way:

> [22] It is hardly necessary for us to repeat what many panels before us have said, which is that the LSBC cannot satisfactorily discharge its function of over-seeing the conduct of its members unless the members respond as required to LSBC investigations. The same must be said about inquiries concerning member conduct initiated by the LSS. The LSBC must remain vigilant. If members of the public were to come to think that the LSBC pursues its investigations casually, by not requiring those under investigation to respond promptly and comprehensively, it might be thought that someone other than lawyers should govern the legal profession. If self-governance were lost, lawyer independence, of which self-governance is an essential element, would be lost as well, and that loss would be contrary to the public interest.

[18] A defence to a citation can be established if it can be proven with the appropriate evidence that a lawyer has suffered an illness that incapacitates the lawyer to the extent of making him/her unable to answer correspondence (see *Cunningham, supra*). No such evidence was tendered on behalf of the

Respondent, though there is a suggestion by his counsel that he may be suffering from depression.

[19] In view of the authorities with respect to the failure to report and on the basis of the evidence that was adduced and is summarized above, professional misconduct was proven.

[20] The Law Society sought a fine of $2,000, an order requiring the Respondent to provide a written response to the correspondence from the Law Society and costs in the amount of $1,500.

[21] The Respondent resigned as a member of the Law Society of British Columbia immediately before the hearing and indicated in his email to counsel for the Law Society that he had no intention of returning to the practice of law. Under the circumstances, Respondent's counsel submitted that a fine would not serve any purpose.

[22] Counsel for the Law Society drew to the Panel's attention a decision in *Law Society of BC* v. *Racette*, 2006 LSBC 29. In that case, as the lawyer at the time of the hearing was no longer a member of the Law Society, the panel concluded that the appropriate penalty was a reprimand. The panel in *Racette* stated as follows:

> If the Respondent were still practising, a suspension would be appropriate given the length of time that passed without a response. However, since the Respondent has been out of the practice since September 16, 2003, no suspension is required.

[23] A specific deterrent is not an important consideration, given that the Respondent is no longer a member of the Law Society. Under the circumstances, there was no need, given the resignation of the Respondent, to fine the Respondent. As a result, a reprimand is ordered.

[24] Respondent's counsel indicated that he had assumed responsibility for the Respondent's files and was in the process of attempting to respond to the concerns of the complainants. As a result, an order requiring the Respondent to provide written responses is unnecessary. The main objective of the Law Society is to ensure that the needs of the client of the Respondent are met. Therefore no order was made with respect to the Respondent providing a written response.

[25] Respondent's counsel made it clear that the Respondent was not in a financial position to pay the costs, as a result of which it was ordered that costs would be payable on or before May 5, 2011.

Decision

[26] The Respondent is hereby reprimanded for his failure to respond to enquiries from the Law Society. The Respondent is ordered to pay the sum of $1,500 in costs, which sum must be paid on or before May 5, 2011.