

2010 LSBC 13

Report issued: May 14, 2010

Oral Reasons: April 8, 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 Penalty**

Hearing date: April 8, 2010

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

Counsel for the Law Society: Eric Wredenhagen

Appearing on his own behalf: Bradley Tak

## **Background**

[1] In our decision on Facts and Verdict (2010 LSBC 07) we determined that the Respondent's failure to respond substantively to repeated requests from Law Society staff amounted to professional misconduct.

[2] A complaint had been made to the Law Society by a client that the Respondent had been retained in September, 2008 and had been provided with a cash retainer. Since that time, the Respondent had failed to respond to the client's repeated telephone calls and messages. As a result, the client could not determine what, if any, steps the Respondent had taken on his behalf.

[3] Upon receipt of the complaint, Law Society staff attempted to communicate with the Respondent on approximately eight occasions and asked for a copy of the client trust ledger setting forth how the Respondent had dealt with the retainer. Communication was by way of telephone (but the Respondent's voice mailbox was frequently full), e-mail and finally a personally delivered letter.

[4] As a result of the personally delivered letter the Respondent stated he would respond to the Law Society on or before November 13, 2009. He did not do what he promised and, in fact, had not done so fully by the time of the hearing date in January, 2010.

[5] The Respondent's Professional Conduct Record includes a previous finding on July 21, 2009, of failure to respond to the Law Society on another matter which resulted in a \$2,000 fine and costs of \$2,000.

[6] Counsel for the Law Society proposed that, in this matter, a suspension of between one and two months should be ordered, together with an order to reimburse \$2,500 of the Society's costs.

[7] The Respondent argued that, if the Panel was inclined towards a suspension, it should be more in the order of seven to 14 days.

## Analysis

[8] Counsel for the Law Society argued that the primary purpose of disciplinary proceedings is the fulfillment of the Law Society's mandate, set out in Section 3 of the *Legal Profession Act*, to uphold and protect the public interest in the administration of justice. He quoted Gavin Mackenzie's text, *Lawyers and Ethics: Professional Regulation and Discipline*, at p. 26-1:

The purpose of the law society discipline proceedings are not to punish offenders and exact retribution, but rather protect the public, maintain high professional standards, and preserve the public confidence in the legal profession.

[9] Law Society counsel also reminded the Panel of the factors to be considered in assessing penalty as set out in *Law Society of BC v. Ogilvie*, [1999] LSBC 17. Of specific relevance in this case are the factors addressed in the next several paragraphs.

The nature and gravity of the conduct

[10] As stated in *Law Society of BC v. Dobbin*, [1999] LSBC 27, if lawyers do not provide "prompt, candid, and complete" responses to Law Society inquiries, the Law Society's ability to govern the profession is compromised, the right of self-government may be threatened, public confidence in the legal profession is shaken, and the profession is brought into disrepute.

The previous character of the respondent, including details of prior discipline

[11] This is the second citation authorized against the Respondent for failing to respond to communications from the Law Society, and it follows quickly on the heels of his July 21, 2009 citation in respect of which he was found to have professionally misconducted himself and was ordered to pay a fine of \$2,000 plus \$2,000 costs.

### **The need for specific and general deterrence and the need to ensure the public's confidence in the integrity of the profession**

[12] The fact that the Respondent has recently been cited and sanctioned for the same type of misconduct as in this matter is strongly suggestive of the need for *specific* deterrence. In addition, *general* deterrence is necessitated as this type of misconduct goes to the heart of the Law Society's ability to govern the profession.

### **The need to ensure the public's confidence in the integrity of the profession**

[13] As stated in *Dobbin (supra)*, "There is no doubt whatever that a persistent, intransigent failure to respond to Law Society communications brings the legal profession into disrepute." This concern is amplified by the fact that the Respondent has been found guilty of professional misconduct for a second time for similar conduct in less than a year.

[14] Counsel for the Law Society set out several similar fact cases regarding citations for failure to respond. Those cases that resulted in a suspension ranged from a suspension of one week in the case of *Law Society of BC v. Hall*, [2003] LSBC 11, to a 45 day suspension in the case of *Law Society of BC v. Williamson*, 2005 LSBC 05 and 2005 LSBC 19.

[15] We have examined these cases and considered them in the light of the factors that we have outlined and order that the Respondent:

(a) be suspended for 45 days commencing July 16, 2010; and

(b) reimburse the Law Society for its costs in the amount of \$2,500, payment to be made on or before September 1, 2010