

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

John Lawrence Chipperfield

Respondent

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

Hearing date: August 10, 2010

Panel: Gavin Hume, QC, Chair, Peter Lloyd, Robert McDiarmid, QC

Counsel for the Law Society: Eric Wredenhagen

Counsel for the Respondent: John Chipperfield

Background

[1] The citation issued against the Respondent contains the following allegations:

1. that, in the course of an investigation by the Law Society of a complaint made by RB, the Respondent failed to respond to communications from the Law Society contrary to Chapter 13, Rule 3 of the *Professional Conduct Handbook* and, in particular, failed to provide a substantive response to letters dated March 31 and April 14, 2010.

These letters are in evidence in Exhibit 6, tabs E and F;

2. that, in the course of an investigation by the Law Society of a complaint made by KS, the Respondent failed to respond to communications from the Law Society contrary to Chapter 13, Rule 3 of the *Professional Conduct Handbook* and, in particular, failed to provide a substantive response to letters dated March 31, 2010 and April 14, 2010.

These letters are in evidence in Exhibit 6, tabs H and I.

3. that, in the course of an investigation by the Law Society of a complaint made by JC, the Respondent failed to respond to communications of the Law Society contrary to Chapter 13, Rule 3 of the *Professional Conduct Handbook* and, in particular, failed to provide a substantive response to a letter dated March 31, 2010, a second letter dated March 31, 2010 and another letter dated April 14, 2010.

These letters are in evidence in Exhibit 6, tabs K, L and M.

[2] The "technical" aspects of the case, namely service of the citation and delivery of the letters, have been made out. Those matters are proven by the affidavits in evidence as Exhibits 2 through 5. The affidavits confirm receipt of these letters by the Respondent. In his testimony the Respondent has agreed that he

received the letters. The evidence is uncontroverted that there was no substantive response or indeed any response by the Respondent to any of the letters referred to in the citation.

[3] Once the Law Society has met the onus of establishing the failure to respond the burden of providing an explanation shifts to the Respondent, as set out in *Law Society of BC v. Dobbin*, [1999] LSBC 27.

[4] In this case the Respondent has given an explanation. Prior to the letters that led to this citation, the Law Society made inquiries relating to a trust audit of the Respondent's practice. The Respondent's explanation is that he raised privilege issues in response to those inquiries. He says the issues that he raised in that prior response are essentially the same issues that he raised in failing to respond to the letters referred to in the citation. His stated reason for his non-response is that any response would require disclosure of privileged matters, he has already refused to disclose those matters, and he is now placed in double jeopardy by being asked to respond to the complaints.

[5] Although for the purposes of this decision we need not decide whether the Respondent's contention that disclosure of requested materials breaches solicitor-client privilege, it may well be that the Respondent is confusing principles applicable to solicitor-client privilege in private law disputes with principles applicable to solicitor-client privilege within the regulatory scheme of the Legal Profession Act. That issue is not before us, and we do not make any decision with respect to that. We note, though, that most of what was sought to be responded to does not appear to require disclosure of privileged matters.

[6] The letter in Exhibit 6, tab E requests four enumerated items. The first three do not on the face of them appear to require disclosure of privileged matters. The fourth one does.

[7] It is up to the Respondent to provide an acceptable explanation for failure to respond. That is so because, as was stated in *Dobbin*:

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.

[8] That same case says 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.

[9] The explanation offered does not satisfy the burden placed on the Respondent in this case. There have been no replies, not even replies that raise the privilege issues that are stated by the Respondent to justify his failure to respond.

Verdict

[10] In the circumstances, we find that the Respondent has professionally misconducted himself as set out in the citation.

Penalty

[11] In reaching our decision on penalty, we did not pay any attention to or rely upon those aspects of the Professional Conduct Record that were a part of Exhibit 7 that came from the Practice Standards Committee.

[12] We have considered the balance of the issues raised during the argument.

[13] We hereby order that the Respondent, on or before August 31, 2010, respond to the questions posed by the Law Society in its correspondence, which are attached as exhibits to Exhibit 6, the affidavit of Ms. Ion, in particular, Exhibits E, F and H, the follow-up letter, Exhibit I, and Exhibits K, L and M.

[14] We have given some thought to and considered the submissions on the fine. We agree that, in some sense, it is, in effect, one issue that is before us. We therefore order that the Respondent pay a fine of \$1,000.

[15] We hereby order that the Respondent pay costs in the amount of \$2,000.

[16] We order that the Respondent be given until August 11, 2011, given his financial circumstances, in which to pay the fine and costs.

[17] We should say that we are concerned that the Respondent has potentially misconstrued the effect of the decision of the B.C. Court of Appeal in *Skogstad v. The Law Society of BC*, 2007 BCCA 310 in the context of the regulatory responsibilities that we have and the effect of Section 88 of the *Legal Profession Act*, as opposed to the solicitor and client privilege that arises in other contexts. We, however, suggest that the Respondent identify, when he complies with the order, those portions of the documents that he is producing that in his view have a solicitor and client privilege attached to it so that he can, if he so desires, given the order that we have just made, take that matter up before the Courts. I repeat that we are concerned that he has misconstrued the effect of that decision, but we suggest that he take that approach when producing documents in response to the various questions.