

2011 : No. 2 Summer

Lawyer 12

Discipline hearing : September 24, 2010, December 15, 2010 and January 10, 2011

Panel : E. David Crossin, QC (single-Bencher panel)

Report issued : March 16, 2011 (2011 LSBC 11)

Counsel : Maureen Boyd for the Law Society and David Taylor for Lawyer 12

Facts

A hearing panel previously found that Lawyer 12 had committed professional misconduct for failing to properly maintain the books and records at his law practice in accordance with the Law Society Rules. Lawyer 12 was ordered to retain and instruct a qualified accountant to prepare semi-annual reports that addressed the compliance requirements of the Rules.

Prior to the formal issuance of the hearing panel's decision, Lawyer 12 contacted a certified general accountant to get a head start on complying with the order. Lawyer 12 advised the accounting firm that a trusted accountant who was familiar with his law practice would provide clarification as to what was required for the first report, due on March 31, 2010.

By January 2010, the certified general accountant still had not received the critical information that defined what the Law Society required. When Lawyer 12 became aware of this, he asked his legal assistant to forward a copy of the terms of the Law Society's order to the certified general accountant. Months later he learned that his instruction was not carried out.

The certified general accountant proceeded to seek information from Lawyer 12's accountant and staff for the purpose of preparing the semi-annual report. In mid-March 2010, Lawyer 12 became concerned that the information being requested by the certified general accountant did not appear to be related to Law Society issues. However, upon receiving advice from his accountant, Lawyer 12 was satisfied that the certified general accountant was preparing the report in accordance with the Law Society's requirements.

Lawyer 12 provided the certified general accountant's written report to the Law Society on March 31, 2010. The report consisted of financial statements for the law practice, but did not include any information relating to whether the books and records of the law practice were maintained in compliance with the Law Society Rules.

On April 1, 2010, the accountant finally requested a copy of the penalty decision from the Law Society which included the report -requirements. In May 2010, Lawyer 12 requested that the March 31, 2010 review be waived due to financial hardship that was created by wasting funds on the initial effort of the accounting firm. He suggested that the trust compliance audit conducted in February 2010 ought to have given the Law Society the comfort it required. This request was denied.

The complete report was prepared by the certified general accountant and submitted to the Law Society in July 2010.

Determination

The panel noted that Lawyer 12 began the process of complying with the hearing panel's order prior to the

penalty hearing that ultimately imposed the obligations. Although he had retained a qualified accountant, the report did not address the requirements of the rules as ordered. It was apparent that there was a failure to communicate effectively with the accounting firm concerning the nature of the -report.

The issue before the panel was whether this failure amounted to professional misconduct. There was no doubt that Lawyer 12 failed to be effectual and could have taken different steps. The panel was not persuaded that, based on the evidence, his conduct amounted to a marked departure from the conduct the Law Society expects of lawyers. Further, the panel was not persuaded that the conduct demonstrated gross culpable neglect of his duties as a lawyer.

The citation was dismissed. Under Law Society Rule 4-38.1(2), if all counts of a citation are dismissed, the hearing report summary must not identify the respondent without the respondent's consent.