

2011 LSBC 19

Report issued: July 25, 2011

Oral Reasons: June 23, 2011

Citation issued: March 21, 2011

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

ELIZABETH DARLENE BRYSON

Respondent

**Decision of the Hearing Panel
on Facts, Determination and Disciplinary Action**

Hearing date: June 23, 2011

Panel: Joost Blom, QC, Chair, Satwinder Bains, Gregory Petrisor

Counsel for the Law Society: Carolyn Gulabsingh, Jaia Rai

Counsel for the Respondent: Alistair Wade

Background facts

[1] This hearing concerns a citation issued March 21, 2011. The citation alleges that the Respondent “failed to provide a substantive response promptly or at all to communications from the Law Society concerning its investigation of the complaint of [a client] contrary to Chapter 13, Rule 3 of the *Professional Conduct Handbook*, and in particular [the Respondent] failed to respond substantively to:

(a) letters dated January 28, 2011, February 16, 2011, and or March 3, 2011; and

(b) a voice mail message left on March 23, 2011.

[2] The Law Society submits the above described failure constitutes professional misconduct.

[3] The Law Society submits, and the Respondent agrees, that correspondence from staff requesting a response to specific questions was forwarded to the Respondent on January 28, 2011. In that correspondence, it was requested that the Respondent respond by February 15, 2011. The Respondent was also requested to advise staff if she needed more time to provide a response. A further request was forwarded from staff to the Respondent via email and Canada Post on February 16, 2011, requesting a response by March 2, 2011. In that February 16, 2011 correspondence, the Respondent’s attention was drawn to Chapter 13, Rule 3 of the *Professional Conduct Handbook*, and to the possibility of the matter being referred to the Discipline Committee. A further request for a response was forwarded by staff of the Law Society, and a telephone message was left for the Respondent by staff, on March 3, 2011. The staff lawyer asked the Respondent to provide her response by March 8, 2011; otherwise the matter would be referred to the Discipline Committee or its Chair with a recommendation that the Chair authorize the issuance of a citation for the Respondent’s failure to respond to the Law Society’s correspondence.

[4] On March 17, 2011, the Respondent contacted the Law Society staff lawyer who had issued the latest correspondence and advised that she was working on a reply to the initial request for information from the

Law Society. She sought advice from the staff lawyer as to whether or not the matter had been referred to the Discipline Committee.

[5] Subsequently, the citation was issued, and the matter was set for hearing. Counsel for the Respondent advised this Panel that, on June 22, 2011, the Respondent provided her written response to the questions initially asked by the Law Society. Counsel for the Respondent advised the Panel that, in his view, the response is thorough and comprehensive. Counsel for the Law Society advised that there had been no opportunity for a Professional Conduct staff lawyer to review that response, and accordingly Law Society counsel could not advise if it was agreed that the Respondent's response was satisfactory.

[6] As stated, the Respondent did not take issue with the allegations made by the Law Society, and admitted to her conduct as described by Law Society counsel. The Respondent did not oppose the Law Society's submission that her conduct constitutes professional misconduct.

Determination

[7] The burden of proof is upon the Law Society to prove on a balance of probabilities that the Respondent's conduct is a marked departure from the conduct the Law Society expects of its members and that the Respondent's conduct is culpable, as set out in *Law Society of BC v. Martin*, 2005 LSBC 16 and *Re: Lawyer 10*, 2010 LSBC 02.

[8] Chapter 13, Rule 3 of the *Professional Conduct Handbook* reads in part as follows:

A lawyer must:

- (a) reply promptly to any communication from the Law Society;
- (b) provide documents as required to the Law Society;
- (c) not improperly obstruct or delay Law Society investigations, audits and inquiries; ...

Disciplinary Action

[9] Counsel for the Law Society submitted that the appropriate disciplinary action is a fine of \$2,000, to be paid by the Respondent by April 30, 2012. Counsel for the Respondent suggested that a reprimand is a sufficient disciplinary action in this instance.

[10] Counsel were able to refer the Panel to two decisions of the Law Society in which a reprimand against the Respondent was ordered for failing to respond to the Law Society in the course of an investigation. Those decisions are *Law Society of BC v. Le Beau*, 2010 LSBC 12 and *Law Society of BC v. Racette*, 2006 LSBC 29. In each of those cases, the hearing panel accepted a reprimand as an appropriate penalty, but in each of those cases, the panel explicitly referred to the fact that the Respondent had ceased practising, and stated in each case that, if the Respondent were still practising, a more severe penalty would be appropriate.

[11] Counsel for the Law Society submitted that suspensions had been imposed for failure to respond to the Law Society only where the Respondent has faced multiple allegations, of which failure to respond is only one, or there had been repeated occurrences of a failure to respond. Counsel for the Law Society and counsel for the Respondent agreed a suspension is not appropriate in this case.

[12] It is the view of this Panel that a reprimand falls outside of the range of penalties established by

decisions which are based on facts reasonably similar to those in this case. Cases cited by counsel and considered by this Panel are *Law Society of BC v. Currie*, 2008 LSBC 21, *Law Society of BC v. Tak*, 2009 LSBC 25, *Law Society of BC v. Cuddeford*, 2010 LSBC 11, *Law Society of BC v. Marcotte*, 2010 LSBC 18, and *Law Society of BC v. Payne*, 2010 LSBC 28.

[13] The fines in those cases cited range from \$1,500 to \$4,000.

[14] We note, in the *Law Society of BC v. Tak* decision, at paragraph 35, the hearing panel considered the failure of the Respondent to provide a response even on the day of hearing to be an aggravating factor, and in that case imposed a fine of \$2,000.

[15] In reviewing the authorities cited by counsel, this Panel has considered the following factors:

- (a) The Respondent is apparently of good character. She has been a member of the Law Society of British Columbia since 1990, and has no disciplinary record. She has contributed significantly to the profession and the public, through her work with the Canadian Bar Association, and other organizations;
- (b) The Respondent's misconduct in this case does not appear to have given her any benefit;
- (c) The Respondent, through her admissions and through the submissions of counsel, has acknowledged her misconduct; and
- (d) Although she has done so at almost the last possible moment, the Respondent has provided a substantive response to the request for information originally made by the Law Society staff lawyer. At this time, it is impossible to determine if the Respondent's response is satisfactory to the Law Society. Accordingly, we were asked to order that the Respondent provide her substantive response by a date certain, in case her response is inadequate. We are of the view that the requirement for a further response from the Respondent, if necessary, is appropriate, but any time frame for the providing of that response should be triggered by an actual request for further information from the Law Society.

[16] In consideration of the factors listed above, including the Respondent's providing a response, albeit extremely late, this Panel is of the view that a fine in the amount of \$1,000 is appropriate.

[17] Both counsel for the Law Society and counsel for the Respondent agreed that any amounts payable by the Respondent should be payable by April 2012.

COSTS

[18] Counsel for the Law Society submitted that costs in the amount of \$1,500, which includes approximately 25 percent of counsel fees actually incurred, are appropriate. Law Society counsel acknowledged that, as a percentage of the actual costs incurred, the amount sought is lower than the percentage normally sought, but made allowance for her own limits of experience and what may have, in the end, been more time than usual spent on preparation. Counsel for the Respondent did not express any disagreement with the amount of costs sought.

[19] The amount of costs sought by the Law Society is not disputed and, more importantly, is reasonable, and there is no reason for the Panel to award any amount other than the amount sought and agreed to. Accordingly, the Respondent is ordered to pay costs to the Law Society in the amount of \$1,500 by April 30, 2012.

ORDER

[20] We order that the Respondent:

1. pay a fine in the amount of \$1,000, pursuant to section 38(5)(b) of the *Legal Profession Act*, payable on or before April 30, 2012.
2. provide a substantive response within 30 days of a request from the Law Society for further information from the Respondent arising from her response dated June 22, 2011.
3. pay costs to the Law Society in the amount of \$1,500 on or before April 30, 2012.