

2012 LSBC 02

Report issued: January 10, 2012

Oral Reasons: December 1, 2011

Citation issued: December 21, 2010

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

Gerardus Martin Maria Laarakker

Respondent

Decision of the Hearing Panel on Disciplinary Action

Hearing date: December 1, 2011

Panel: Leon Getz, QC, Chair, Nancy Merrill, Alan Ross

Counsel for the Law Society: Carolyn Gulabsingh

Appearing on his own behalf (by telephone): Gerardus Laarakker

Background

[1] The Panel delivered its decision on Facts and Determination on July 14, 2011 and issued a written report on September 21, 2011 (2011 LSBC 29). The Panel found that the Respondent had committed professional misconduct as alleged in the Citation.

[2] This matter proceeded to a hearing on Disciplinary Action on December 1, 2011. At the close of that hearing, the Panel orally indicated to the parties that the following disciplinary action would be imposed:

(a) a fine in the amount of \$1,500; and

(b) costs in the amount of \$3,000;

both payable by October 31, 2012.

[3] We have set out below our reasoning for making this ruling.

POSITION OF THE PARTIES

[4] The position of the Law Society can be summarized as follows:

(a) The purpose of disciplinary proceedings is to uphold the public's interest in the administration of justice;

(b) The factors to be considered in assessing disciplinary action are set out in the 1999 decision of *Law Society of BC v. Ogilvie*, [1999] LSBC 17;

(c) The Respondent was found to have committed professional misconduct by making discourteous remarks about another lawyer on two occasions, the first on an internet blog and the second in a letter

directed to the other lawyer;

(d) Incivility is not the most serious form of misconduct. However, it does reflect poorly on the profession;

(e) There are several cases that are seen to be analogous, and the penalties in those cases range from a fine of \$1,000 to a suspension of one month.

[5] With respect to Mr. Laarakker, the Law Society notes that he was called in November, 1997. He is 67 years of age. He practises at a small firm in Vernon. At the time of the infraction he was a sole-practitioner. His Professional Conduct Record is not an aggravating or mitigating factor. The Law Society notes that the posting of the blog was available to the public at large.

[6] On the positive side, the Law Society notes that the Respondent removed the internet blog posting as soon as he was asked to do so by the Law Society. Further, the Law Society notes that the Respondent issued a form of apology to the other lawyer after the Law Society's Decision on Facts and Determination.

[7] Given these factors, the Law Society submits that a fine and payment of costs are appropriate.

[8] Based upon the seriousness of the offence and the factors from the *Ogilvie* decision (supra), the Law Society argues for a fine in the amount of \$2,500. In addition, the Law Society seeks costs of \$4,500. The Law Society wants each of these amounts to be payable by April 30, 2012.

[9] On his own behalf, Mr. Laarakker submits that no fine should be assessed and that he should be given a reprimand. He also notes, with respect to costs, that in his opinion, the Law Society took a number of steps that were not required, such as sending documents by courier when he would have accepted delivery by mail.

Decision

[10] As noted above, the Panel concluded that the appropriate disciplinary action in this case would be a fine in the amount of \$1,500. While Mr. Laarakker's conduct did constitute professional misconduct, the Panel noted that it is the first such conduct on Mr. Laarakker's behalf.

[11] The Panel also noted, as set out in the Decision on Facts and Determination, that Mr. Laarakker felt a personal connection to the client who approached him on this matter. He felt personally offended by the steps that were being taken by the opposing lawyer. This personal connection increased the ire with which Mr. Laarakker responded to the other lawyer's correspondence. While these facts do not justify his actions, they do speak to the reason that he took the steps that he did.

[12] For these reasons, we find that Mr. Laarakker's actions fall at the lower end of the spectrum of cases submitted by the Law Society.

COSTS

[13] With respect to costs, as noted, the Law Society seeks costs in the amount of \$4,500 which represents full disbursements plus approximately 30 per cent of actual counsel fees.

[14] Given the factors to be considered in the awarding of costs, including:

(a) the seriousness of the offence;

(b) the financial circumstances of the Respondent;

(c) the total effect of the disciplinary action including possible fines and/or suspension; and

(d) the extent to which the conduct of each of the parties has resulted in costs accumulating or conversely being saved,

(*Law Society of BC v. Racette*, 2006 LSBC 29), this Panel finds that costs of \$3,000 are appropriate.

[15] As noted, the offence was not of the most serious nature. The hearing took a total of two days, mostly due to the fact that there were no admissions of professional misconduct. However, the Mr. Laarakker's admissions of fact did abbreviate the length of the hearing. In all the circumstances we consider that Mr. Laarakker should have until October 31, 2012 to pay the fine and costs.

ORDER

[16] The Respondent is ordered to pay the following by October 31, 2012:

(a) a fine of \$1,500; and

(b) costs in the amount of \$3,000.