

2012 LSBC 06

Report issued: February 02, 2012

Oral Reasons: September 27, 2011

Citation issued: November 24, 2010

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

Paul Cameron Wilson

Respondent

Decision of the Hearing Panel

Hearing date: September 27, 2011

Panel: Thelma O'Grady, Chair, Leon Getz, QC, Gregory Petrisor

Counsel for the Law Society: Jaia Rai

Counsel for the Respondent: Robin McFee, QC

Background

[1] This hearing was ordered in a Citation authorized by the Discipline Committee on November 4, 2010, issued on November 24, 2010 and amended under Rule 4-16(1)(a) on September 9, 2011.

[2] The Citation pertains to a matter in which Mr. Wilson was appointed Committee of the Estate and Person of a Client who later passed away. Mr. Wilson, to his knowledge, was named in the Client's will as executor of the Client's estate. The Citation as amended alleges that, for a six-year period, Mr. Wilson

(a) failed to either renounce his executorship or apply for a Grant of Probate and administer the Client's estate, and

(b) failed to file tax returns for the estate.

The Citation alleges that that conduct constitutes professional misconduct or conduct unbecoming a lawyer.

[3] Mr. Wilson admits service of the amended Citation.

[4] This matter came before the Hearing Panel pursuant to Rule 4-22, which allows the Discipline Panel to accept a conditional admission of a discipline violation and proposed disciplinary action. Mr. Wilson has conditionally admitted having "engaged in conduct unbecoming a lawyer by committing the disciplinary violation as set out in the Citation issued November 24, 2010 and as amended on September 9, 2011," and he has proposed a fine in the amount of \$4,500, payable by April 30, 2012, and costs in the amount of \$3,000 payable by April 30, 2012 as an appropriate sanction. That proposal was accepted by the Discipline Committee. Accordingly, this Panel is required to consider the proposal.

[5] At the conclusion of the hearing, we gave our decision orally. We found that the conduct specified in the amended Citation was proven, and that the agreed upon fine and costs are within the range of appropriate disciplinary action. We ordered that Mr. Wilson pay a fine in the amount of \$4,500, and costs of \$3,000, by

April 30, 2012. These are our written reasons.

Facts

[6] The Law Society and Mr. Wilson, through counsel, filed an Agreed Statement of Facts. That Agreed Statement of Facts sets out the following:

1. Mr. Wilson was called to the Bar of the Province of British Columbia on July 12, 1983. He has, for almost all of the time period from the date of his call to the date of the hearing, practised with the firm of Fasken Martineau Dumoulin LLP. Mr. Wilson practises as a solicitor in the field of environmental and energy law. He does not practise in the area of wills and estates.
2. The complainant was a friend of the client. The complainant contacted Mr. Wilson on a weekend, asking him to meet with the client on short notice, prior to the client undergoing surgery, to take instructions for a Will. Mr. Wilson met the client that day and obtained those instructions.
3. Another lawyer in Mr. Wilson's firm prepared the Will, and the client executed the Will prior to being admitted into surgery. The Will appointed Mr. Wilson as executor and trustee, and appointed the lawyer who prepared the Will as alternate executor.
4. Following the client's surgery, Mr. Wilson provided non-legal services to the client, including assisting her with errands, arranging for transportation to and from medical appointments, and arranging for delivery of groceries. A medical assessment concluded that the client was not capable of living independently or handling her own affairs. Unless someone was willing to take on the management of the client's affairs, including arranging for 24 hour home care, the client was to remain hospitalized indefinitely and would eventually be transferred to a long-term care facility. Mr. Wilson determined that the client had the financial means to pay for the home care, and he filed a petition in the Supreme Court of British Columbia, seeking, among other things, an order appointing him as Committee of the person and affairs of the client with bond. As a result of that application, Mr. Wilson was appointed Committee of the person and estate of the client.
5. After his appointment as Committee, including the issuance of a bond, Mr. Wilson arranged for the client's return home and engaged the services of a 24 hour home care agency. He arranged for payment of the client's bills and expenses and the purchase of household items. He arranged for continuation of and payment for services including meals, personal grooming, gardening, and landscaping and handyman services on behalf of the client.
6. The client passed away on October 8, 2003.
7. Mr. Wilson knew that, as the executor named in the Will, it was his responsibility to make application to the Court for grant of probate or renounce his executorship if he was unable or unwilling to assume the role of executor.
8. Through to October 2009, Mr. Wilson did not make an application for the grant of probate, nor did he renounce his executorship. As a result, the client's estate was not probated. Mr. Wilson continued arranging for payments to be made to service providers, including upkeep and securing of the client's home and property.
9. Mr. Wilson did not file the client's final income tax return or any tax returns for the client's estate, even though he knew the estate was earning income. Mr. Wilson says that he believed that, after the client's passing, income tax returns could only be filed by the duly appointed executor.

10. In 2003, and later in 2008 and 2009, Mr. Wilson made some attempts to determine the requirements for and collect the necessary information to make the application for grant of probate, but he did not follow through with those attempts. Mr. Wilson did not take any effective steps to advance the matter until after November 2009 when he retained a lawyer practising in the area of wills and estates with another firm to take conduct of the matter.

11. Mr. Wilson notified the complainant, who lived in Victoria, of the client's death. They agreed to meet at the client's home together to deal with the client's personal effects. The complainant says she was waiting for Mr. Wilson to contact her to arrange a date, and Mr. Wilson says that he and the complainant agreed that the meeting would take place when the complainant next went to Vancouver. In any event, the joint attendance at the client's home did not take place.

12. The complainant and Mr. Wilson had the following communications regarding the status of the application for the grant of probate:

(a) In the summer of 2007, the complainant contacted Mr. Wilson by telephone, and he advised her that he hoped to complete the probate of the Will after he returned from his vacation in July.

(b) On March 9, 2008, the complainant sent Mr. Wilson two emails inquiring whether the probate had been completed and, in the event it had not, whether the matter could be handed over to another lawyer. The complainant did not receive a reply from Mr. Wilson.

(c) The complainant telephoned Mr. Wilson in October 2008, at which time Mr. Wilson agreed to meet with her at his office on October 28, 2008.

(d) The complainant and Mr. Wilson met at his office on October 28, 2008. Mr. Wilson acknowledged that he had not yet applied for the grant of probate and apologized. The complainant and Mr. Wilson had both observed the client's home, and saw that it had been broken into. At the October 28, 2008 meeting, they discussed the condition of the residence, and agreed that it was not worthwhile to expend money to repair the residence.

(e) On November 7, 2008, the complainant emailed Mr. Wilson to further express her concerns regarding his failure to dispose of the client's estate and the deplorable condition of the client's residence.

(f) Mr. Wilson replied by email on November 12, 2008 apologizing for his failure to deal with the matter. He advised he had spent the last weekend pulling the information together to make the application.

(g) The complainant emailed Mr. Wilson on November 14, 2008 requesting a progress update by the end of the month and requesting to meet in December. Mr. Wilson did not reply to the email.

(h) The complainant emailed Mr. Wilson on December 8, 2008 again requesting a progress update. Mr. Wilson did not reply to that email.

13. The complainant was a beneficiary under the Will, but Mr. Wilson did not advise the complainant of that fact during any of their communications from 2003 to 2008.

14. On approximately December 15, 2008, the complainant made a complaint to the Law Society alleging delay and inactivity by Mr. Wilson concerning the application for the grant of probate and failure to respond to her inquiries.

15. Mr. Wilson admitted early in the investigation that the complaint was valid and that he had not

obtained probate of the Will. Mr. Wilson advised the lawyer investigating the complaint that he had engaged members of his firm to make the application for a grant of probate. Subsequently, those members of his firm determined they should not make the application because of a potential conflict of interest, and Mr. Wilson retained a solicitor practising at another firm to assume conduct of the file.

16. Although Mr. Wilson met with a chartered accountant on August 28, 2009, he did not forward documents needed to prepare the final tax return of the client and tax returns for the estate until March 9, 2010. On the advice of the lawyer he had retained to take conduct of the matter, Mr. Wilson renounced his executorship and signed a form of renunciation on March 11, 2010. Mr. Wilson continued working with the chartered accountant he had retained to finalize the outstanding tax returns, and those were filed on March 31, 2010 for the years 2005 through 2009.

17. On June 21, 2010, the Court granted the Letters of Administration with Will Annexed appointing a trust company as Administrator with Will Annexed of the client's estate, and accordingly, as of that date Mr. Wilson's powers and obligations as Committee ceased. The preparation and filing of the estate's tax returns thus became the responsibility of the trust company.

18. Despite Mr. Wilson's dilatory conduct and the long delay in applying for probate, the value of the client's estate's primary assets increased in value after the client's death, but it is unknown to what extent that increase in value is offset by any loss occasioned by the delay, including tax consequences from the failure to file the income tax returns.

DISCUSSION

[7] Counsel for the Law Society referred to Law Society of *BC v. Ogilvie*, [1999] LSBC 17, which sets out the following factors which should be considered by the Panel:

- (a) the nature and gravity of the conduct proven;
- (b) the age and experience of the Respondent;
- (c) the previous character of the Respondent, including details of prior discipline;
- (d) the impact upon the victim;
- (e) the advantage gained, or to be gained, by the Respondent;
- (f) the number of times the offending conduct occurred;
- (g) whether the Respondent has acknowledged the misconduct and taken steps to disclose and redress the wrong and the presence or absence of other mitigating circumstances;
- (h) the possibility of remediating or rehabilitating the Respondent;
- (i) the impact of the Respondent of criminal or other sanctions or penalties;
- (j) the impact of the proposed penalty on the Respondent;
- (k) the need for specific and general deterrence;
- (l) the need to ensure the public's confidence in the integrity of the profession; and
- (m) the range of penalties imposed in similar cases.

[8] Ms. Rai submitted that analysis is appropriate even though this is a case where the Hearing Panel is urged to find conduct unbecoming rather than professional misconduct.

[9] Ms. Rai cited, as mitigating factors, Mr. Wilson's lack of a discipline record, the fact that Mr. Wilson received no personal benefit, and that he had no dishonest intent and was not guilty of deceit. She submitted that, without dishonest intent or deceit, a suspension is not appropriate.

[10] Ms. Rai cited, as an aggravating factor, the fact that Mr. Wilson had resources available in his firm to assist him.

[11] Mr. McFee, for Mr. Wilson, characterized Mr. Wilson as a well-meaning person, whose generosity led to the chain of events that are the subject of this hearing. Mr. McFee submitted that the expectation of all involved is that there will be no adverse economic consequences to the beneficiaries or the estate as a result of Mr. Wilson's actions, but that is fortuitous rather than by design. Mr. Wilson, through Mr. McFee, advised the Panel that he is remorseful.

[12] Mr. McFee also cited the Ogilvie (*supra*) decision and the factors enumerated in that decision as providing useful guidance for the Panel, despite the fact that the Ogilvie decision deals with a case of professional misconduct rather than conduct unbecoming. Mr. McFee submitted that the mandate of the Law Society includes as its primary purpose the protection of the public, and further that a finding of conduct unbecoming and the proposed sanction will serve that purpose. Mr. McFee submitted there will be no repeat of the conduct that led to the citation against Mr. Wilson.

Determination

[13] We thank counsel for their preparation of the Agreed Statement of Facts, and their able and helpful submissions.

[14] As previously stated, we find the allegations contained in the amended Citation have been proven.

Disciplinary Action

[15] Counsel cited a number of decisions in support of their joint submission, including *Law Society of BC v. McLellan*, 2011 LSBC 23 (\$5,000 fine and \$3,000 costs), *Law Society of BC v. Epstein*, 2011 LSBC 12 (\$4,500 fine and \$2,000 costs), *Law Society of BC v. Ranspot*, 2007 LSBC 32 and 2007 LSBC 56 (\$5,000 fine and \$8,300 costs), *Law Society of BC v. Campbell*, [1997] LSDD No. 58 (\$3,000 fine and \$1,000 costs, and a practice review at the lawyer's own expense), and *Law Society of BC v. Wynne*, [1995] LSDD No. 269 (\$3,500 fine and \$1,640 costs).

[16] Applying the relevant factors set out in the Ogilvie decision, based on the evidence and the submissions of counsel:

- (a) the conduct to be sanctioned is delay, not any sort of deceit;
- (b) Mr. Wilson, although a senior member of the bar, is not experienced in the administration of estates;
- (c) Mr. Wilson does not have a prior discipline history;
- (d) the impact upon the client's estate is not fully known, but the available information suggests the impact is not serious;
- (e) there was no advantage to be gained by Mr. Wilson;

(f) the offending conduct occurred in relation to one matter, although it covered a time period spanning approximately six years;

(g) Mr. Wilson properly acknowledged his conduct, disclosed his conduct, and took steps to redress the wrong. He had previously served the client well and with generosity;

(h) there is no indication Mr. Wilson is at risk to have similar difficulties in the future, or that this matter is part of a pattern of conduct and accordingly, remediation or rehabilitation is not an important factor; and

(i) the proposed sanction, a fine, and the amount of the fine, as well as the amount of costs, are within the range suggested by previous decisions, and are reasonable in all the circumstances.

ORDER

[17] The Panel orders that Mr. Wilson pay to the Law Society, by April 30, 2012:

1. a fine in the amount of \$4,500; and
2. costs in the amount of \$3,000.