

2012 LSBC 07

Report issued: February 07, 2012

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

Andrew James Liggett

Respondent

**Decision of the Hearing Panel
on Disciplinary Action**

Hearing date: November 24, 2011

Panel: Gavin Hume, QC, Chair, Nancy Merrill, Thelma O'Grady

Counsel for the Law Society: Jaia Rai

Counsel for the Respondent: David Taylor

introduction and BACKGROUND

[1] In a decision issued August 11, 2011 this Hearing Panel found Mr. Liggett had committed professional misconduct when he sent a Notice of Trial to the Law Society and in so doing either knowingly or recklessly misrepresented that he continued to be unavailable for a discipline hearing.

[2] The Chambers Benchers had considered Mr. Liggett's request of an adjournment of the discipline hearing on the basis that he was in a two-day trial. The Chambers Benchers requested confirmation that Mr. Liggett was booked for a trial on the same date as the discipline hearing. When Mr. Liggett finally sent the requested confirmation, the second day of the trial had in fact been cancelled. Mr. Liggett knew that. In sending the Notice of Trial with that knowledge, he misrepresented that he continued to be unavailable.

[3] The Panel also concluded at paragraph [31] of the Decision on Facts and Determination that, "At a minimum the Respondent acted recklessly. His action was a marked departure from what is expected in such circumstances."

[4] The Law Society's position is that the appropriate disciplinary action in respect of the proven misconduct is a suspension in the range of one to three months.

[5] Counsel for Mr. Liggett argued that the appropriate disposition on the issue of disciplinary action was a reprimand or a very short suspension, coupled with a modest fine.

[6] Mr. Liggett's Professional Conduct Record consisted of four items: a Conduct Review in 2002; an administrative suspension in 2006; various recommendations and directions by the Practice Standards Committee in a referral to the Practice Standards department from September 2006 to March 2010; and a fine and costs following a hearing of citation in 2008.

[7] Other than the Conduct Review in 2002, Mr. Liggett's record involved his systemic failure to maintain his books and records in accordance with Part 3, Division 7 of the Law Society Rules and failure to produce records in the course of a Rule 4-43 investigation. In other words, there exists a clear pattern over time of

Mr. Liggett overextending himself in his workload, number of offices, and his law practice management skills.

[8] Over a number of years the Law Society has made various recommendations and directions aimed at assisting Mr. Liggett to manage his finances and his workload, and maintain his books and records in accordance with Law Society Rules. Mr. Liggett himself refers to these years as “one elongated effort” to get his books and records in line with Law Society Rules.

Decision

[9] The factors to be considered in assessing disciplinary action are set out in the 1999 decision in *Law Society of BC v. Ogilvie*, [1999] LSBC 17, as follows:

- (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 upon 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 in similar cases.

[10] The Panel agrees with the submission of counsel for the Law Society that, in this case, the most important factor in determining the appropriate disciplinary action is the need to maintain the public’s confidence in the ability of the disciplinary process to regulate the conduct of lawyers.

[11] As noted in *Law Society of Alberta v. MacKay*, [1997] LSDD No. 152, a lawyer’s obligation to the regulator is no less important than his or her obligations to the court.

[12] As stated in *Law Society of BC v. Power*, 2009 LSBC 23, paragraph [36]:

Integrity is a fundamental quality of a member of the profession. This requires a person to act in the utmost good faith with respect to the governing body of the legal profession.

[13] And as stated in *Law Society of BC v. Karlsson*, 2009 LSBC 13, paragraph [7]:

The practice of law is based on honesty. The profession could not function at all if judges, other lawyers, and members of the public could not rely on the honesty of lawyers. Anything that

undermines the trust that society places on lawyers is a serious blow to the entire profession.

[14] Although the Panel has found that the misrepresentation by Mr. Liggett was made recklessly rather than in a deliberate attempt to mislead the Law Society, the conduct is nevertheless serious and the level of culpability established is towards the higher end of the spectrum. As such, a suspension rather than a fine is appropriate. This is consistent with the principles set out in the Bencher Review decision in *Law Society of BC v. Martin*, 2007 LSBC 20, which analyzes whether a suspension or fine is the most appropriate sanction.

[15] This Panel has concluded that a suspension of one month is required in order to impress upon the profession and the public that a lawyer's obligations to their self-governing body, especially in the context of discipline proceedings, must be approached with the utmost integrity and good faith and conduct falling below such a standard will result in serious consequences.

[16] The Panel directs that the suspension commence on the first day of the March, 2012 or at such other time that the Law Society agrees to.

COSTS

[17] The Law Society seeks costs based on the principle of partial indemnity in the amount of \$6,000. The Panel awards such costs and orders that they be paid by October 31, 2012 or such other reasonable date that Mr. Liggett and the Law Society can agree on.

ORDER

[18] The panel orders as follows:

1. The Respondent is suspended for one month beginning March 1, 2012;
2. The Respondent must pay costs in the amount of \$6,000 to the Law Society on or before October 31, 2012;
3. The dates for serving the suspension or paying costs may be altered by agreement of the parties.