

2012 LSBC 09

Report issued: February 17, 2012

Oral Reasons: January 24, 2012

Citation issued: October 28, 2011

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

Glenn John Niemela

Respondent

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

Hearing date: January 24, 2012

Panel: Patricia Bond, Chair, Dr. Gail Bellward, William Sundhu

Counsel for the Law Society: Alison Kirby and Carolyn Gulabsingh

Counsel for the Respondent: Henry Wood, QC

introduction

[1] Mr. Niemela is cited for failing to respond to the Law Society contrary to Chapter 13, Rule 3 of the *Professional Conduct Handbook*.

[2] The matter was heard by way of a summary hearing, and Mr. Niemela did not contest the facts, disciplinary action, or the costs as submitted by counsel for the Law Society.

Facts

[3] In summary, a complaint was made against Mr. Niemela on May 24, 2011. The staff lawyer investigating the complaint requested a response by July 28, 2011 to her correspondence dated July 11, 2011. She received no response.

[4] By letter of August 22, 2011, the staff lawyer requested a response by September 6, 2011. While Mr. Niemela telephoned the staff lawyer on August 30, 2011, and apologized for the delay, he did not respond to the complaint.

[5] The staff lawyer followed up on September 9, 2011, advising the matter would be referred to the Discipline Committee with a recommendation that a citation be issued if no response was received by September 14, 2011.

[6] The citation was issued October 28, 2011. The Law Society received a response dated January 16, 2012, one week prior to the hearing.

DECISION AND REASONS

[7] We accept the Law Society's position and Mr. Niemela's acknowledgment that the appropriate finding in this case is one of professional misconduct.

[8] The test for professional misconduct, as set out in *Law Society of BC v. Martin*, 2005 LSBC 16, requires a finding that the lawyer's conduct:

- (a) represents a marked departure from the standard expected from lawyers; and
- (b) was not beyond his control or the result of an innocent mistake.

[9] In his letter to the Law Society dated January 16, 2012, Mr. Niemela has acknowledged his obligation to respond to the Law Society in a timely manner. While he explains that the circumstances of his workload played a major factor in his failure to respond, he did not present those circumstances or any others as an excuse for his behaviour.

[10] In addition, the majority in *Law Society of BC v. Dobbin*, [1999] LSBC 27, held that a failure to respond to the Law Society will always be prima facie evidence of professional misconduct.

Disciplinary Action

[11] In assessing the appropriate disciplinary action, we have considered the applicable factors as set out in *Law Society of BC v. Ogilvie*, [1999] LSBC 17.

Nature of the Conduct

[12] Failure to respond to the Law Society has consistently been regarded by hearing panels as a serious breach of a lawyer's professional obligations. The duty to reply to communications from the Law Society goes to the heart of the Law Society's regulation of the profession, and failure to comply jeopardizes the Society's self governing status. *Law Society of BC v. Dobbin*, supra.

Factors Related to the Respondent

[13] Mr. Niemela was called to the bar in 1988.

[14] Mr. Niemela's Professional Conduct Record includes the following:

1. Recommendations were made by the Practice Standards Committee in 2001 and 2002 aimed at improving Mr. Niemela's standard of practice in specific areas of law and assisting him with his workload and file management.
2. In 2002, Mr. Niemela agreed to practise in the areas of wills and estates, family law and personal injury under the supervision of practice supervisors. In 2004 he was relieved of the supervision requirements.
3. In 2008 Mr. Niemela was disciplined for failing to respond to another lawyer about the release of a Certificate of Pending Litigation.

[15] Mr. Niemela's Professional Conduct Record reflects a pattern of delay and procrastination and weighs in favour of disciplinary action at the higher end of the applicable range as a matter of specific deterrence of this individual.

[16] While Mr. Niemela did acknowledge his misconduct and apologized to the Panel, no other mitigating factors were presented.

[17] In this case, the delay of 24 weeks after the initial request to respond is a further aggravating factor.

General Deterrence and Need to Maintain Public Confidence

[18] The need for general deterrence commands a disciplinary action that reflects the seriousness of the offence, particularly in light of Mr. Niemela's disciplinary record. Failure to reflect that seriousness appropriately risks erosion of the public's confidence in the ability of the Law Society to regulate the conduct of its members.

CONCLUSION

[19] The Panel has reviewed the case law presented by the Law Society and accepts that the appropriate disciplinary action for professional misconduct in this case is a fine of \$5,000. This takes into consideration Mr. Niemela's Professional Conduct Record, which reflects a history of delay and procrastination, and is consistent with the concept of progressive discipline and specific deterrence.

[20] The Panel urges Mr. Niemela to take the steps necessary to address any underlying issues which have contributed to this citation.

[21] Costs will be payable by the Respondent in the sum of \$2,000. Both the fine and costs are payable by April 30, 2012.