

2012 : No. 3 Fall

Brian Clark Rea

Kelowna, BC

Called to the bar: May 15, 1992

Non-practising membership: May 2009 to June 2012

**Discipline hearing** : April 18, 2012

**Panel** : Kenneth Walker, Chair, Gavin Hume, QC and Lois Serwa

**Report issued** : June 27, 2012 (2012 LSBC 22)

**Counsel** : Leonard Doust, QC and Jaia Rai for the Law Society and Grant Gray for Brian Clark Rea

## Facts

In December 2008, Brian Clark Rea was arrested for accessing child pornography on a home computer. The Law Society commenced an investigation that was subsequently held in abeyance pending conclusion of the criminal proceedings.

In the meantime, steps were taken to protect the public, and Rea recognized the need for these measures. In May 2009, he became a non-practising lawyer and gave a written undertaking that he would not engage in the practice of law until released from this undertaking.

In April 2010, Rea pleaded guilty to the charge of accessing child pornography and was sentenced to 14 days in jail and placed on a two-year probation order. The conditions of the order required Rea to take a sex offender rehabilitation program and to not attend public places where children under 16 were present or expected to be present. The conditions of that order extend to April 2015.

The Law Society's investigation continued after Rea's plea to the criminal charge.

## Admission and disciplinary action

The panel accepted Rea's conditional admission of a disciplinary violation, and found Rea's use of the internet to view child pornography to be conduct unbecoming a lawyer.

The *Professional Conduct Handbook* sets out the standard of conduct expected of a lawyer. A lawyer must not, in private life, extra-professional activities or professional practice, engage in dishonourable or questionable conduct that casts doubt on the lawyer's professional integrity or competence, or reflects adversely on the integrity of the legal profession or the administration of justice.

There were 94 images of child pornography found on Rea's home computer. While some of the images of abuse were of very young children, Rea was interested in images of teenage boys. The panel also found that Rea viewed the images in his home and that there was no connection between the conduct and his practice of law.

The panel reviewed letters from Rea's colleagues who stated that, if he was permitted to practise law, they believed he would apply himself diligently to serve his clients in a professional and ethical manner.

A psychiatrist examined Rea and reported that Rea became aware of homosexual interests in his teens but was unable to accept or tolerate such thoughts. Rea attempted suicide following the disclosure of his

conduct in viewing child pornography.

The panel found that the psychiatrist expressed two relevant opinions. First, he believed that the ultimate goal of ongoing therapy would be to help Rea to accept his sexual orientation and that there was no evidence to suggest that Rea was at risk to act on his sexual interests with teenage boys. Second, he did not think Rea's difficulties would interfere with his capacities to practise law and that he was able to control his impulses and conduct.

As the panel had no similar case upon which to base its decision on disciplinary action, the panel referenced several other matters. After considering these cases and the very serious nature of Rea's conduct, the panel concluded that Rea's conduct did not warrant disbarment, but rather a lengthy suspension. A suspension of three to four years was called for in the circumstances. Since, as a result of his conduct, Rea had already not practised law for over three years, the panel agreed that an additional six-month suspension was appropriate.

The panel ordered that Rea:

1. be suspended for six months;
2. pay costs of \$10,000; and
3. be subject to conditions on his return to practice:
  - not to represent any persons under the age of 16;
  - not to practise in the area of family law;
  - to continue in the care of a psychologist or psychiatrist, adhere to any advice or treatments, and provide progress reports to the Law Society;
  - to abide by any orders, directions and recommendations of the Practice Standards Committee