2012 LSBC 31
Report issued: December 17, 2012
Citation issued: November 9, 2011

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

JOHN EDWARD ROBERTS

Respondent

Decision of the Hearing Panel on Facts and Determination

Hearing date: September 21, 2012
Panel: David W. Mossop, QC, Chair, Shona A. Moore, QC, Lawyer, Thelma Siglos, Public representative

Counsel for the Law Society: Jaia Rai
Counsel for the Respondent: Albert M. Roos

Background

The Citation

[1] The Citation was issued on November 9, 2011 and amended on August 28, 2012. Mr. Roberts admits service of the Citation and of the amended Citation (together, referred to as "the Citation").

[2] The amended Citation sets out the nature of the conduct to be inquired into:

> 1. In or about July 2010, in the course of acting for your client, C Inc., in an action in British Columbia Supreme Court, you engaged in sharp practice contrary to Canon 4(3) of the Canons of Legal Ethics and to Chapter 2, Rule 1 of the *Professional Conduct Handbook* by some or all of:
>
> > (a) proceeding by default and obtaining default judgment against the defendant, when you knew the defendant was represented by another lawyer, without providing to her reasonable notice of your intention to do so, contrary to Chapter 11, Rule 12 of the *Professional Conduct Handbook* and to your duties as an officer of the court;
> >
> > (b) failing to reply reasonably promptly and substantively to communications from another lawyer, Lisa Laird, that required a response, and, in particular, to some or all of letters dated July 8, 2010, July 16, 2010, July 22, 2010 and July 27, 2010, contrary to Chapter 11, Rule 6 of the *Professional Conduct Handbook*.
>
> This conduct constitutes professional misconduct.
>
> 2. Alternatively, in or about July 2010, in the course of acting for your client, C Inc., in an action in British Columbia Supreme Court, you engaged in some or all of the following conduct:
>
> > (a) proceeded by default and obtained judgment against the defendant, when you knew the defendant was represented by another lawyer, without providing to her reasonable notice of your intention to do so, contrary to Canon 4(3) of the Canons of Legal Ethics, to Chapter 11, Rule 12 of the *Professional Conduct Handbook* and to your duties as an officer of the court;
> >
> > (b) failed to reply reasonably promptly and substantively to communications from another lawyer, Lisa Laird, that required a response, and, in particular, to some or all of letters dated July 8, 2010, July 9, 2010, July 16, 2010, July 22, 2010 and July 27, 2010, contrary to Chapter 11, Rule 6 of the *Professional Conduct Handbook*;

(c) failed to withdraw the application for default judgment after receiving a letter dated July 9, 2010 from Lisa Laird, counsel for the defendant.

This conduct constitutes professional misconduct.

3. In or about July 2010, in the course of acting for your client, C Inc., in an action in British Columbia Supreme Court, you failed to properly supervise your legal assistant when applying for and obtaining default judgment on behalf of your client, contrary to Chapter 12 of the *Professional Conduct Handbook*.

This conduct constitutes professional misconduct.

[3] At the commencement of the hearing, counsel for the Law Society advised the Panel that the Law Society was not proceeding against the Respondent on the third allegation of the Citation.

[4] The allegations addressed in the Citation concern the conduct of the Respondent during July and August 2010 while representing a Plaintiff, "C Inc.", in a civil action against the Royal Canadian Mint. During the course of representing the client, the Respondent applied for, and obtained, default judgment in July 2010.

[5] The questions before this Panel are whether the Respondent engaged in professional misconduct by proceeding by default and obtaining default judgment without providing the Defendant's counsel reasonable notice of his intention to do so, by failing to respond to correspondence from the Defendant's legal counsel, and by failing to withdraw the application for default judgment in July 2010, particularly after receiving notice that the Defendant's legal counsel was unaware that default judgment had been obtained.

[6] The Law Society alleges that the Respondent violated the *Professional Conduct Handbook* (the "Rules") and that those breaches constitute sharp practice, which amounts to professional misconduct. Alternatively, the Law Society alleges that, even if the Respondent did not engage in sharp practice, his conduct nevertheless amounts to professional misconduct.

Facts

[7] The Law Society and the Respondent filed an Agreed Statement of Facts, which was marked as an exhibit in these proceedings.

[8] In addition to the Agreed Statement of Facts, the Panel heard evidence from the Respondent and his legal assistant. As well, affidavit evidence was received from Stephen Price, a lawyer who appeared as the Respondent's agent in some related court applications and who represented the Respondent early on in the Law Society's investigation of Mr. Roberts' conduct and until Mr. Roberts retained Mr. Roos, a few months before this hearing.

[9] The Panel accepts the whole of the Agreed Statement of Facts. Below, we have set out excerpts from the Agreed Statement of Facts. The Panel emphasizes, however, that it accepts the whole Agreed Statement of Facts in coming to its decision.

[10] The Respondent was called and admitted as a member of the Law Society of British Columbia on November 10, 1995. Until November 2006, he practised with two different law firms in Langley, BC. Since then, he has practised as a sole practitioner in Langley, BC. He is a general practitioner, and civil litigation makes up approximately one-third of his practice.

[11] The Respondent represented C Inc. (the "Plaintiff"), in an action for damages for breach of contract and negligent misrepresentation commenced against Royal Canadian Mint (the "Defendant"). The Defendant was represented by Lisa Laird.

[12] The Action was commenced in May 2010. On June 1, 2010, the Defendant filed an appearance and immediately gave notice requesting that the dispute be referred to arbitration in accordance with the provisions of the contract between the Plaintiff and the Defendant.

[13] The Agreed Statement of Facts set out the events relevant to this Citation. References are to the paragraph numbers in the Agreed Statement of Facts. We have, as indicated, omitted or edited some parts of the document.

12. The Writ of Summons and Statement of Claim was served on the Defendant on June 3, 2010.

13. On June 8, 2010, Ms. Laird filed a Notice of Motion dated June 7, 2010 on behalf of the Defendant seeking an order referring the dispute set out in the Statement of Claim for arbitration and a stay of proceedings (the "Stay Application").

14. On June 9, 2010, Ms. Laird served the Stay Application and a supporting affidavit on Mr. Roberts and requested his available dates for hearing.

15. On June 17, 2010, Mr. Roberts faxed a letter to Ms. Laird enclosing the Plaintiff's Response opposing the relief set out in the Stay Application.

16. On June 28, 2010, Ms. Laird emailed Mr. Roberts stating she would like to set a date for the hearing of the Stay Application.

17. Mr. Roberts emailed Ms. Laird on July 7, 2010 advising that he would like to set down a Rule 18A application at the same time as the Stay Application and requesting her availability during the week of November 1, as he had been advised by the court registry that this was the first available week for the hearing. In that email, Mr. Roberts stated, "In the meantime, please file your Statement of Defence within the required time limits."

[14] Mr. Roberts was away from his office most of the time between July 7, 2010 and August 3, 2010 to attend to his volunteer commitments to children's softball. He was active in the Langley Baseball Association and responsible for coordinating various teams and their preparation for attending tournaments in BC and elsewhere. In addition to his administrative duties, he coached and had one of his children playing on a softball team. It is evident that these volunteer activities overwhelmed Mr. Roberts' personal resources and interfered with his ability to attend to the rapidly evolving developments in the Action during July 2010.

[15] During the next three and a half weeks, as Mr. Roberts' main focus was away from his practice, the pace of the litigation picked up. Again, from the Agreed Statement of Facts:

18. Ms. Laird responded by letter dated July 8, 2010. In that letter, she wrote:

> Thank you for your email response to my request for your available dates for a hearing of the [Stay Application]. You indicated that you wish to set a summary trial for the same time as the [Stay Application], and you requested my availability for the week of November 1.
>
> I am available in the first week of November for a summary trial of this proceeding. I am unable to advise you at this time, however, whether the [Defendant] will agree that this case is suitable for summary trial as I have not turned my mind to that question.
>
> In the meantime, I would like to set the [Stay Application] for hearing as soon as possible. If the [Defendant] is successful on the motion, neither party need incur the costs of preparing for a summary trial. Should the [Defendant] be unsuccessful, the Rule 18A (now Rule 9-7) application may go ahead in November as you suggest. I therefore reiterate my request for your available dates for a motion hearing in August and September.
>
> Finally, I note your request that the [Defendant] file a statement of defence within the usual time limits. In my view, filing a defence before the [Stay Application] is determined is not in keeping with the spirit of the new Rules of Court, which emphasize proportionality and cost-effective case management.
>
> Success for the [Defendant] on the motion would make a statement of defence unnecessary. Accordingly, I request your indulgence in having the motion determined before a defence is filed. Any delay occasioned by the motion can be minimized by seeking the earliest possible hearing date.
>
> To that end, I propose that the proceeding be transferred to the New Westminster registry for the sole purpose of the [Stay Application]. This should provide greater scheduling flexibility within the court and a greater likelihood of an early hearing date. Please advise whether you are agreeable to this limited transfer.

[16] The Respondent saw this letter on Friday, July 9, 2010 when he was in his office briefly in the morning. Before he left, he gave his assistant instructions to file for default judgment and to let Ms. Laird's office know an application for default would be made. The Respondent's assistant called and left a voice mail message with Ms. Laird's office. The narrative is picked up by the Agreed Statement of Facts.

19. On July 9, 2010, Ms. Laird recalls receiving a voice mail message from the assistant, advising that the Plaintiff intended to apply for default judgment.

20. Mr. Roberts' assistant then confirmed that advice in a letter to Ms. Laird dated July 9, 2010, in which she stated that Mr. Roberts is away from the office "until Tuesday or Wednesday next week" and "Our instructions are to proceed with filing of the default judgment within the prescribed time limits."

21. After leaving the voice mail and sending the letter, Mr. Roberts' assistant filed an application for default judgment on July 9, 2010.

22. Ms. Laird responded to Mr. Robert's assistant's July 9, 2010 letter by letter of same date in which she wrote:

> … I draw Mr. Roberts' attention to s. 25 of the *Crown Liability and Proceedings Act*:
>
> > 25. In any proceeding against the Crown, judgment shall not be entered against the Crown in default of appearance or pleadings without leave of the court obtained on an application at least fourteen clear days notice of which has been given to the Deputy Attorney General of Canada.
>
> I will expect your application materials shortly. As it seems reasonable for the court to hear both motions at the same time, I will set the [Stay Application] for hearing on the same day as your application for leave …

[17] Ms. Laird was resolute in her position that no application for default judgment could be made against the Royal Canadian Mint without 14 days' notice and leave of the court. The Respondent did not accept that the Action was caught by s. 25 of the *Crown Liability and Proceeding Act* as, in his view, the Action was not a proceeding against "the Crown" within the meaning of the Act. In formulating this view of the law, The Respondent relied on *Pierre v. Pacific Press* (1993), 83 BCLR (2d) 1 (CA).

[18] The Respondent did not review Ms. Laird's July 9 letter until sometime after this return to the office on July 29, 2010.

[19] Ms. Laird did not file a Statement of Defence at this time or any time.

[20] We return to the narrative set out in the Agreed Statement of Facts:

23. Mr. Roberts had already left the office for a lengthy trip as a volunteer with Langley Minor Baseball prior to Ms. Laird's letter arriving on July 9, 2010. As a result, when Mr. Roberts' assistant received Ms. Laird's letter dated July 9, 2010, she sent the following email to Mr. Roberts on July 9, 2010 at 2:53 p.m.:

> Def Judg pckg has been sent in for entry.
>
> Letter from DOJ rec'd subsequent to my msge today – Laird has referred to S. 25 of the Crown Liability and Proceedings Act which states that "judgment shall not be entered against the Crown in default of appearance or pleadings without leave of the Court obtained on an application at least 14 clear days notice of which has been given to the Deputy Attorney General of Canada."
>
> Laird has indicated that she'll expect our materials.
>
> Shall I pull our default package?

24. Mr. Roberts did not respond to Ms. Laird's letters dated July 8 and 9, 2010.

[21] Although the Respondent did not personally respond to the July 9 letter, his assistant did so by voice mail and in writing.

25. Ms. Laird proceeded on the assumption that the parties would prepare materials for the Stay Application and the Plaintiff's application for leave to apply for default judgment.

26. On July 16, 2010, Ms. Laird delivered to Mr. Roberts a Notice of Hearing and Applicant's Outline with a cover letter. According to the Notice of Hearing, the Stay Application was scheduled for the "week of" July 26, 2010 because the Chilliwack registry operates on the assize system. In her cover letter, Ms. Laird requested that Mr. Roberts advise her if there was any day during the week of July 26 that was not convenient to him and further requested that he provide her with his application materials

so that a joint Chambers Record could be prepared and filed.

27. On July 19, 2010 at 4:07 p.m., Mr. Roberts, who was still away from the office, emailed his assistant instructing her to advise Ms. Laird that he was out of the country until Wednesday, July 28, 2010.

28. On July 20, 2010, Mr. Roberts' assistant wrote to Ms. Laird advising that Mr. Roberts was out of the country and would not be returning until July 28, 2010, and that July 29, 2010 was the only date that Mr. Roberts was available during the week of July 26.

29. Default judgment was entered against the Defendant on July 19, 2010. On July 22, 2010, Mr. Roberts' office received the entered Judgment.

30. On July 22, 2010, Ms. Laird delivered a revised Notice of Hearing under cover of letter to Mr. Roberts' assistant, which indicated the hearing had been scheduled for the week of August 3, 2010. In the cover letter, Ms. Laird stated that the registry informed her that a judge will not be available on July 29 and that the hearing of the Stay Application will be on August 3 or 4. Ms. Laird requested Mr. Roberts outline so that the Chambers Record could be prepared and inquired whether Mr. Roberts intended to pursue the motion for default judgment as indicated in his letter of July 9, 2010.

31. Mr. Roberts did not respond to Ms. Laird's letter to his assistant dated July 22, 2010.

32. On July 27, 2010, Ms. Laird wrote to Mr. Roberts' assistant regarding the Respondent's outline in connection with the Stay Application (which had not been received). In that letter, she wrote, "I assume Mr. Roberts has abandoned his intention to seek default judgment."

33. Mr. Roberts did not respond to Ms. Laird's July 27, 2010 letter to his assistant.

34. On July 29, 2010, on his return to the office, Mr. Roberts wrote to Ms. Laird enclosing a copy of the entered default judgment and requesting her available dates for a hearing to assess damages.

Application to Set Aside Default Judgment and August 2010 Order

35. The Defendant applied to set aside the default judgment and applied for short leave to bring the application so that it could be heard on August 3, 2010, the date scheduled for the hearing of the Stay Application.

36. Ms. Laird delivered the filed Notice of Application and supporting affidavits to Mr. Roberts under cover of a letter dated Friday, July 30, 2010. The application was returnable on the morning of Tuesday, August 3, 2010. Monday, August 2, 2010 was a statutory holiday.

37. On the morning of August 3, 2010, Mr. Roberts' assistant sent a letter to Ms. Laird. The letter stated that Mr. Roberts was briefly in the office on July 29, 2010 but remained on holidays and would be returning on August 4, 2010. With respect to the timing of the application, Mr. Roberts' assistant wrote:

> I note that you are applying for short notice to have your application to set aside the default order heard sooner than the Rules provide. First, I'm sure Mr. Roberts' response to this application would be that there is no urgency to your application. Second, Mr. Roberts is a sole practitioner with limited dates of availability in the summer. You can advise the court that he is available to hear the application to set aside the default order on the following dates: August 10, or the weeks of August 16 or 23.

38. On August 3, 2010, prior to receiving Mr. Roberts' assistant's letter, Ms. Laird appeared in Supreme Court, Chilliwack Registry, before Madam Justice Gropper to speak to the short leave application, the application to set aside the default judgment as well as the Stay Application. Mr. Roberts did not attend. Gropper J. requested Ms. Laird to contact Mr. Roberts' office and the matter was stood down. Ms. Laird called Mr. Roberts' office and spoke with his assistant.

39. The matter was recalled in court at which time Ms. Laird advised the court:

> Yes, My Lady, I did contact Mr. Roberts' office and I did speak with his assistant … just before the court break this morning. Mr. Roberts' assistant informs me that a letter was faxed to my office downtown at 8:06 this morning indicating that Mr. Roberts did not intend to appear today, that it's his position that there's no urgency to the application to set aside the default judgment and that that

should be heard at a time that is more convenient to him. He suggests dates of the 10th of August or the following weeks thereafter.

40. Gropper J. proceeded to hear submissions on the application to set aside the default judgment and the Stay Application. Gropper J. ordered the default judgment set aside and ordered a stay of proceedings (the "August 2010 Order"). Oral reasons were given.

41. On August 4, 2010, Ms. Laird wrote to Mr. Roberts enclosing a copy of the August 2010 Order and advising that it has been sent to the Registry for filing.

Appeal and Reconsideration of August 2010 Order

42. Mr. Roberts sought leave to appeal the August 2010 Order to the Court of Appeal (the "Leave Application") on the basis that the Defendant had not complied with the Rules of Court in obtaining short leave for hearing of the application to set aside the default judgment. As a result, Mr. Roberts took the position that the application was made without proper notice and the remaining orders, including the order to stay proceedings, were improper as having been made as a consequence of setting aside the default judgment.

[22] The Leave Application was eventually heard on November 5, 2010 before Mr. Justice Low. Stephen Price appeared as agent for the Respondent at the Leave Application. The Leave Application was dismissed as the Appellant had not exhausted all of its remedies, such as bringing the matter back before the original Chambers Judge, Gropper J. As it turns out, the August 2010 Order had, in fact, been entered and, therefore, Gropper J. was functus.

[23] Again, in the mistaken belief that the August 2010 Order had not been entered, a reconsideration application was filed and heard by Gropper J. The Chambers Judge held that the Respondent's non-appearance on August 3, 2010 was not purposeful as he was under a misapprehension as to which application was proceeding on that date. She did confirm, however, the terms of the August 2010 Order.

[24] The Respondent sought leave to appeal the reconsideration decision of Gropper J. That application was dismissed.

THE LAW SOCIETY INVESTIGATION

[25] During the course of the Law Society investigation, the Respondent was represented by Stephen Price until in or around August 2012, at which time the Respondent retained Albert Roos. Before Mr. Roos' letter of August 15, 2012, the Respondent provided information to the Law Society that was incomplete and, as a result, inaccurate.

[26] We accept Mr. Price's affidavit evidence that, throughout the time he acted for the Respondent, his focus was twofold: first, whether the Respondent had the proper legal basis to file and maintain a default judgment in all of the circumstances; and second, whether the Crown was entitled to obtain an order setting aside a default judgment in the same hearing at which it was applying for short leave.

[27] Mr. Price very candidly admits that he did not turn his mind to whether the Respondent should have replied to certain correspondence of Ms. Laird and certain other matters now addressed in the Citation. As a result, the Respondent did not make a thorough search of his email databases and the email database of others in his office in order to ensure that his responses to the Law Society were full and complete.

[28] As a result of this misdirected focus, it was only in August 2012 that the Law Society received additional evidence, including the Respondent's time sheets and his email to his assistant on July 19, 2010 asking her to let Ms. Laird know that he would be out of town until July 28, 2010.

ISSUES

[29] The issues in this case are:

(a) Did the Respondent provide counsel for the Defendant with reasonable notice of his intention to proceed by and obtain default judgment in July 2010?

(b) Did the Respondent's conduct fall short of his obligations under Chapter 11, Rule 6 of the *Professional Conduct Handbook* when he failed to respond to certain correspondence from Ms. Laird while he was absent from his office for an extended period of time in July 2010?

(c) Was the Respondent under a positive professional obligation to withdraw the application for default judgment once he knew that the Defendant's legal position was that no application for default judgment could be made against the Defendant because the Defendant claimed status as the Crown and, consequently, the protection of s. 25 of the *Crown Liability and Proceedings Act*?

(d) If any of the first three issues are answered in the affirmative, does the Respondent's conduct constitute dishonorable conduct or sharp practice?

FINDINGS

Reasonable Notice

[30] On July 7, the Respondent emailed Ms. Laird and, for the first time, advised her that he required her Statement of Defence "within the required time limits" but made no reference to his intention to proceed by default. The Respondent quite properly did not suggest that this email constituted any notice to proceed by default.

[31] Two days later, on July 9, 2010, the Respondent left instructions with his assistant to file for default judgment and to advise Ms. Laird of his intention to do so. The Respondent's assistant followed his instructions and left Ms. Laird a voice mail message to that effect and wrote her a letter on the same date. Again, following the Respondent's instructions, his assistant filed for default judgment that same day.

[32] Whether notice constitutes "reasonable notice" turns on the circumstances of each case. It is not defined in any applicable statute or rule. In the circumstances of this case we are satisfied that reasonable notice was not given. Notice of a few hours, only, of an intention to proceed for default judgment, is not reasonable notice in the circumstances of this case.

[33] The evidence is also clear that the Respondent did not respond to Ms. Laird's correspondence of July 9, July 16, July 22 and 27, 2010 until his return to the office on July 29. We note that he did respond by email to her letter of July 8, 2010.

[34] There is no suggestion on the evidence that, when the Respondent knew he would be away from the office for an extended period, he put into place any coverage for his law practice beyond the careful attention of his legal assistant. Although we have no doubt that his assistant was able to deal with routine matters, the Respondent knew there was at least one matter that may have required focused attention by a lawyer. He made no arrangements to deal with emergency issues that might arise on this active litigation file.

[35] The Respondent had an obligation to respond promptly to opposing counsel's correspondence once he was in receipt of Mr. Laird's letters of July 9, July 16, 22 and 27, all of which made it clear that Ms. Laird was operating on a fundamental misunderstanding of the facts. That is, she was unaware that default judgment had been sought and subsequently obtained. In such circumstances, a prompt response to Ms. Laird's correspondence was necessary and required.

[36] The Panel recognizes that the Respondent was, and remains, a single practitioner. However, all counsel, whether single practitioners or lawyers in large law firms, should make arrangements to deal with correspondence coming into their practices while they are away. Simple matters can be handled by staff. More important matters need the attention of a lawyer. In large firms, a lawyer may be designated to babysit the files. Some single practitioners have similar arrangements with other single practitioners. No evidence was presented to the Panel that such an arrangement existed here. Being away for holidays or other worthwhile activity is no excuse for failure to respond to correspondence. Lawyers who do not have backup systems take a serious risk that nothing important comes in.

[37] Chapter 11, Rule 12 of the *Professional Conduct Handbook* states that:

> A lawyer who knows that another lawyer has been consulted in a matter must not proceed by default in the matter without inquiry and reasonable notice.

[38] Chapter 11, Rule 6 requires that a lawyer must reply reasonably promptly to any communication from another lawyer that requires a response.

[39] Breach of one of the Rules is not sufficient to find professional misconduct. A breach of the Rules amounts to professional misconduct if the "… facts as made out disclose a marked departure from that

conduct the Law Society expects of its members …": *Law Society of BC v. Martin*, 2005 LSBC 16, [2005] LSDD No. 118 at para. 171.

[40] The Respondent's failure to respond to Ms. Laird's correspondence of July 9 and after, particularly when it was clear that Ms. Laird was unaware that he had applied for default judgment, fails to meet the standards of professional integrity and competence we require of our members.

[41] We conclude that, considered individually and together, the Respondent's failure to give reasonable notice of his intention to proceed by default and his failure to reply reasonably promptly and substantively to communications of Ms. Laird on and after July 9, 2010 amount to a marked departure from the conduct the Law Society expects of lawyers.

[42] We make no such finding with respect to the Respondent's failure to withdraw the application for default judgment after receiving Ms. Laird's letter dated July 9, 2010.

[43] By that letter, Ms. Laird drew the Respondent's attention to s. 25 of the *Crown Liability and Proceeding Act*. From that point on, Ms. Laird proceeded on the basis that the Respondent would accept her view that any application would be caught by the Act. Having said that, in our view, the Respondent was not required to accept Ms. Laird's position on the law. We are satisfied that he proceeded on behalf of his client in good faith and was entitled to oppose the position of the other side. We are not persuaded that the Respondent's conduct in this regard fell below the standard we expect of members of the Law Society.

[44] The final question is whether the Respondent's misconduct as found above, is raised to the level of sharp practice as set out in the first allegation of the Citation. We conclude that it does not.

[45] Sharp practice is defined in *Black's Law Dictionary*, as "unethical action and trickery, especially by a lawyer."

[46] Canon 4(3) of the Canons of Legal Ethics states:

> A lawyer should avoid all sharp practice and should take no paltry advantage when an opponent has made a slip or overlooked some technical matter. A lawyer should accede to reasonable requests which do not prejudice the rights of the client or the interests of justice.

[47] The Respondent's misconduct resulted from choices he made, or failed to make, that led to his failure to respond to correspondence from opposing counsel and to seek and obtain default judgment without reasonable notice to the other side.

[48] We are satisfied that the Respondent's conduct was not motivated by an intention to obtain an advantage for his client. His conduct was not calculated to achieve that result nor intended to deceive Ms. Laird. We conclude, therefore, that the Respondent did not engage in sharp practice.

RESULT

[49] We conclude the Respondent did not engage in sharp practice as set out in allegation 1 of the Citation.

[50] We further conclude that the Respondent did not engage in professional misconduct, as set out in allegation 2(c) of the Citation, when he failed to withdraw the application for default judgment after receiving a letter dated July 9, 2010 from Lisa Laird, counsel for the Defendants.

[51] We do, however, find that the Respondent did commit professional misconduct as set out in allegation 2(a) and (b) of the Citation when, in or about July 2010, he:

> (a) proceeded by default and obtained default judgment against the Defendant, when he knew the Defendant was represented by another lawyer, without providing to her reasonable notice of his intention to do so, contrary to Canon 4(3) of the Canons of Legal Ethics, Chapter 11, Rule 12 of the *Professional Conduct Handbook* and to his duties as a officer of the court, and
>
> (b) failed to reply reasonably promptly and substantively to communications from another lawyer, Lisa Laird, that required a response, and in particular, to her correspondence dated July 9, July 16, July 22 and 27, 2010, contrary to Chapter 11, Rule 6 of the *Professional Conduct Handbook*.