

Admission to Discipline Committee

AGREED STATEMENT OF FACTS

Alexander John Markham-Zantvoort

Called to Bar: August 27, 2003

Ceased membership: January 1, 2013

Admission accepted: January 24, 2013

Counsel: Carolyn Gulabsingh for the Law Society, Mr. Markham-Zantvoort on his own behalf

MEMBER BACKGROUND

1. Alexander John Markham-Zantvoort (the “Respondent”) was admitted to the bar of the Province of British Columbia on August 27, 2003. The Respondent was admitted to the bar of the province of Ontario on February 7, 1996.
2. After his call to the British Columbia bar, the Respondent was an associate with Comparelli & Company from November 2003 until October 1, 2008. From October 1, 2008 until July 2, 2012 the Respondent worked as a sole practitioner. The Respondent practised primarily in the area of civil litigation.
3. Since July 27, 2012 the Respondent has been suspended from practising law in British Columbia pursuant to Rule 3-79.1 of the Law Society Rules for failing to provide explanations to the Law Society’s Trust Regulation Department.

Citation and Service

4. The citation in this matter was authorized by the Discipline Committee on November 20, 2012 and was issued on November 29, 2012 (the “Citation”).
5. The Respondent admits that on Friday, December 7, 2012 he was served with the Citation in accordance with the requirements of Rule 4-15 of the Law Society Rules.

Attachments

6. Except where otherwise stated, it is agreed in respect of each document attached to this Agreed Statement of Facts that it:
 - a. is a true copy of the original document,
 - b. was written or created on the date on the face of the document,
 - c. where by the content or nature of the document it was intended to be sent or delivered, that it was sent or delivered on the date it bears on its face and was subsequently received by the intended recipient,

- d. where on its face the document purports to have been written or created under the instructions of the person who signed it or where on its face the document's creation was authorized by the person who signed it, that it was so written, created or authorized,
- e. where the document purports on its face to have been received on a particular date or time, that it was so received, and
- f. is admitted into evidence for the proof of the truth of the matters recorded in it.

Background Facts

- 7. On March 1 and 2, 2012, the Respondent's practice was subjected to a Compliance Audit under Rule 3-79 (the "Compliance Audit").
- 8. After the Compliance Audit was completed, the Law Society's Trust Regulation Department wrote to the Respondent about concerns that arose during the Compliance Audit, and sought to have the Respondent reply to the concerns raised. The Trust Regulation Department wrote letters to the Respondent dated May 2, 2012, June 4, 2012 and June 26, 2012. The Respondent did not reply to any of these letters.
- 9. On July 27, 2012, the Respondent was suspended from practice for failing to provide explanations to the Trust Regulation Department.
- 10. On August 15, 2012, Keiron Grady, a lawyer employed by the Law Society in the Professional Conduct Department, wrote to the Respondent on behalf of the Law Society and asked him to address the issues identified in the correspondence to him from the Trust Regulation Department and to explain why he failed to respond to communications from the Trust Regulation Department.
- 11. On September 7, 2012, the Respondent wrote to the Law Society by email in response to Mr. Grady's August 15, 2012 letter. In his email, the Respondent said:

I am writing in response to your correspondence dated August 15, 2012. As you may not be aware, my practice has been under the custodianship of the Law Society since July of this year. Mr. Trevor Kaatz is the specific lawyer who has custody of my practice.

As a consequence of speaking with the Law Society's custodianship department, and specifically Mr. Kaatz, I was led to understand that it would be inappropriate for me to respond to your correspondence, as my practice is under custodianship. I was informed by Mr. Kaatz that it would be the custodianship department that would be responding to the issues raised in your correspondence. To that end, I am copying Mr. Kaatz with this email, and will be providing him with a copy of the correspondence I received from you. Trusting the foregoing is satisfactory.

The Respondent's email dated September 7, 2012 is admitted as proof of the statements made by the Respondent, and not for proof of the truth of the statements made in it.

- 12. On September 17, 2012, Mr. Grady wrote to the Respondent and explained he must have misunderstood what he was told by Mr. Kaatz. In the letter, he also told the Respondent he was obligated to respond to the Law Society's letter dated August 15, 2012. The September 17, 2012 letter from the Law Society to the Respondent was delivered to the Respondent by email and by Canada Post.
- 13. On October 1, 2012, Mr. Grady wrote to the Respondent and requested a response to the Law Society's September 17, 2012 letter by October 15, 2012. This letter was delivered to the Respondent

by email and Canada Post.

14. On October 19, 2012, Mr. Grady wrote to the Respondent again and told the Respondent that if by October 29, 2012, he had not replied to the Law Society's letters, the matter would be referred to the Discipline Committee or its Chair, pursuant to the summary hearing process with a recommendation for a citation. A

15. The Respondent did not provide a response to the Law Society's letters dated August 15, 2012, September 17, 2012, October 1 and October 19, 2012.

Admission of Misconduct

16. The Respondent admits he failed to provide a substantive response to communications from the Law Society concerning its investigation into issues arising from the compliance audit conducted on his practice for the period August 1, 2010 to December 31, 2011, contrary to Chapter 13, Rule 3 of the *Professional Conduct Handbook*, and in particular he failed to respond substantively to letters dated August 15, 2012, September 17, 2012, October 1, 2012 and October 19, 2012 as set out in the Citation.

17. The Respondent admits that his conduct in doing so constitutes professional misconduct.