

2013 LSBC 08

Report issued: March 06, 2013

Oral Reasons: February 13, 2013

Citation issued: December 4, 2012

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

Crystal Irene Buchan

Respondent

Decision of the Hearing Panel

Hearing date: February 13, 2013

Panel: Leon Getz, QC, Chair, Paula Cayley, Public Representative, William Sundhu, Lawyer

Counsel for the Law Society: Carolyn Gulabsingh

Counsel for the Respondent: Mary Clare T. Baillie

introduction

[1] The Respondent was cited for failing to provide a substantive response promptly or at all to communications from the Law Society, contrary to Chapter 13, Rule 3 of the *Professional Conduct Handbook*. This provision requires lawyers, among other things, to “reply promptly to any communication from the Law Society.” It has now been replaced by rule 7.1-1 of the *Code of Professional Conduct for British Columbia*, which requires the lawyer to reply “promptly and completely” to such communications. The Law Society says that the Respondent’s failure constituted professional misconduct.

[2] The matter proceeded by way of a summary hearing pursuant to Law Society Rule 4-24.1, succinctly described by Ms. Gulabsingh in her written submission as “a summary hearing process to provide an efficient, timely, and cost-effective mechanism for dealing with lawyers who fail to observe their regulatory obligations.” The Law Society asks us to impose a fine of \$3,500 and an order to pay costs in the amount of \$2,000. The Respondent, who gave some oral evidence, did not contest the facts, the characterization as professional misconduct of her conduct as revealed by those facts, or the disciplinary action sought by the Law Society.

[3] We have decided that the Respondent must pay a fine of \$3,000 and reimburse the Law Society \$1,000 on account of its costs.

Facts

[4] Around July 22, 2012 the Law Society received a complaint about several aspects of Ms. Buchan’s quality of service on a file, specifically failure to reply to communications from the client or to do so on a timely basis. The complaint was assigned for investigation to Kieron Grady, a staff lawyer. On August 23, 2012 he telephoned Ms. Buchan to tell her about the complaint and that he would be writing to her soliciting her response to it. He followed up with a letter dated the next day, August 24, and asked for a response by

September 14. On September 14 Mr. Grady received both a telephone call and an emailed letter from Ms. Buchan indicating that her assistant was away and asking for the time to reply to be extended to September 19. Mr. Grady agreed to this request.

[5] On September 19, Ms. Buchan wrote to Mr. Grady enclosing certain documents and apologizing for any distress that she may have caused her client.

[6] On September 25 Mr. Grady wrote another letter to Ms. Buchan, sent by mail and email, asking her before October 9 to address six particular matters that he identified. His letter included the following paragraphs:

The Discipline Committee has directed that when a member fails to respond to communications from the Law Society, the member's attention be drawn to Chapter 13, Rule 3 of the Professional Conduct Handbook, which reads: "A lawyer shall reply promptly to any communication from the Law Society."

Please be advised that any failure to respond to the Law Society may be referred to the Chair of Discipline Committee pursuant to the new summary hearing process. Details of the process may be found in the Rules 3-6(4), 4-4.1 and 4.24.1 of the Law Society Rules, and the Benchers' Bulletin dated July, 2007 which may be found on-line in the Publications section of the Law Society website.

[7] On October 17, not having heard from Ms. Buchan, Mr. Grady wrote again to her seeking a reply to his letter of September 25, this time by October 26. He reminded her that in the absence of a reply the matter might become the subject of a citation. He received no reply.

[8] On December 4, 2012, the Discipline Committee authorized the issuance of a citation, which was issued on December 10, 2012.

[9] On February 1, 2013, some two months after the issuance of the citation and about two weeks before this hearing, Ms. Buchan provided a response to Mr. Grady's letters of September 25 and October 17.

DISCUSSION

Professional Misconduct

[10] The Law Society's position, which the Respondent does not dispute, is that the proper finding in this case is one of professional misconduct. We agree. The test, as set out in *Law Society of BC v. Martin*, 2005 LSBC 16, is whether the conduct in question represents a marked departure from the standard that the Law Society expects of its members. As noted in *Law Society of BC v. Dobbin*, [1999] LSBC 27, a failure to respond to the Law Society will always be prima facie evidence of such misconduct. In the circumstances we have no hesitation in finding that the Respondent committed professional misconduct.

Disciplinary Action

[11] As we have indicated, we have decided that Ms. Buchan must pay a fine of \$3,000 and must reimburse the Law Society in the amount of \$1,000 on account of its costs.

[12] In coming to these conclusions we have considered those factors outlined in *Law Society of BC v. Ogilvie*, [1999] LSBC 17, that seem relevant. In particular, in relation to the fine, we have taken account of the following considerations:

Nature of the Conduct

[13] 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 its ability to perform its statutory responsibility to regulate the profession and failure to comply therefore places the profession's self governing status at risk.

Factors Related to the Respondent

[14] The Respondent has been a member of the Law Society since 1992, practising almost exclusively in the family law field. It is fair to say that, in recent years, in addition to her professional obligations, she has had to manage a variety of significant personal pressures attributable to serious disabilities or illnesses that have afflicted close members of her family, including a sister with whom she once practised law in partnership but who is no longer able to practise due to injuries suffered in a vehicle accident, and her husband, who is seriously disabled and unable to work. In the fall of 2012, around the time she received the first letter from Mr. Grady, she learned that her elderly mother, who lived in Winnipeg, was terminally ill. This compounded her stress.

[15] The Respondent told us that cumulatively these circumstances rendered her almost incapable of responding appropriately to the Law Society's request; in her words, she found herself "paralyzed" by the requests, unable to deal with them. She also said that she misunderstood the significance of Mr. Grady's cautions, in his letters of September 25 and October 17, about the importance of responding and the possibility of a citation if she did not. To her credit, the Respondent did eventually seek counselling and legal advice but not, however, until after the citation was served on her in December 2012.

[16] We accept that the Respondent's personal circumstances were, and perhaps to some extent still are, a source of great stress. We empathize with her. On the other hand, we are not persuaded that the pressures on her in the fall of 2012 are relevant to any issue that we must decide. We note that she does not dispute either that she is guilty of professional misconduct or the sanction sought by the Law Society. We note as well, however, that the pressures that she testified to did not, apparently, prevent her from dealing with correspondence and other matters in the ordinary course of carrying on her practice throughout the period following receipt of the first communication from the Law Society in August 2012. She has not, in our opinion, provided any specific, meaningful explanation for why she failed to respond to the Law Society. In *Law Society of BC v. Marcotte*, 2012 LSBC 18, the panel remarked, at paragraph [49], that the respondent's failure to respond in that case seemed to be "just another symptomatic illustration of a deep rooted problem." Given the facts we have outlined and the Respondent's professional conduct history referred to below, that observation seems apposite here. We are encouraged by the fact that she has sought professional advice to help her to deal with her stresses.

Professional Conduct Record

[17] This is not the first time that issues have arisen about the Respondent's responsiveness to letters from the Law Society. Similar issues had apparently been canvassed in a so-called "file-side chat" with the Respondent in February 2007. More serious, however, in July 2011 she underwent a Conduct Review arising from a complaint about, once again, delay and quality of service issues in a client matter (including complaints about failure to communicate with the client) and failure to respond to the Law Society. The events in question antedated by some considerable time the complaint that has given rise to these proceedings and, while the Conduct Review Subcommittee did not recommend any further action, its Report included the following:

The Member's primary problems were that she did not adequately manage her client's expectations and that she delayed her response to the Law Society. She then compounded these errors by providing the Law Society with a less than timely and a rather incomplete response to the complaint.

The Conduct Review Subcommittee also wrote:

[T]he Member seems to have more recently recognized how some of the issues in her personal life were impacting her practice and she appears to now be taking appropriate measures to deal with these issues. The Member seemed genuinely remorseful for what had occurred.

Acknowledgement of Misconduct

[18] In her first response to the Law Society on September 14, 2012, the Respondent expressed her apologies for "any stress or concern" that she had caused her client. She repeated this apology in her letter of September 19 and again in her evidence at the hearing, in which she also affirmed the importance of responding promptly to communications from the Law Society.

The Range of Sanctions Imposed in Similar Cases

[19] We have been referred to a number of fairly recently decided cases involving breaches of Chapter 13, Rule 3 of the *Professional Conduct Handbook*. The fines imposed have ranged between \$2,000 (*Law Society of BC v. Decore*, 2012 LSBC 17; *Law Society of BC v. Malcolm*, 2012 LSBC 4) to \$5,000 (*Law Society of BC v. Niemela*, 2012 LSBC 9). The factors that seem to have influenced panels in determining the appropriate level of fine have included such matters as the number of times the respondent has failed to respond appropriately, the respondent's professional conduct record and whether or not the citation was a first citation.

[20] We do not think that much is to be gained from a microscopic analysis of the prior decisions. On the facts the closest case seems to be that of *Niemela*. There, as here, the professional conduct record revealed "a pattern of delay and procrastination" that the panel considered "weighs in favour of disciplinary action at the higher end of the applicable range as a matter of specific deterrence of this individual," *Niemela*, supra, at paragraph [16]. In that case the panel considered that the delay of 24 weeks after the initial request for a response was an additional aggravating factor. There was a comparable delay in this case.

[21] Making the best sense we can out of the relevant considerations, we have decided that the appropriate disciplinary action is to fine the Respondent \$3,000, and we so order.

COSTS

[22] Schedule 4 to the Law Society Rules is a Tariff of costs payable by a respondent or the Society in respect of a hearing. The Tariff contemplates an award of \$2,000 per day in respect of a summary hearing. This, however, is subject to section 5.9(1-4) of the Rules, which reduces the amount by one-half in the case of a day that includes less than 2.5 hours of hearing. That was the case here, and accordingly we order the Respondent to reimburse the Law Society in the amount of \$1,000 on account of its costs.

PAYMENT OF FINE AND COSTS

[23] The amounts payable by the Respondent by way of fine and on account of costs must be paid on or before April 30, 2013 unless the parties agree to a different payment date.

SEALING OF EXHIBITS

[24] We have been asked to make an order pursuant to Law Society Rule 5-6 (2) that Exhibits “A”, “E”, “F” and “G” to the Affidavit of Kieron Grady sworn January 7, 2013, filed in these proceedings, be sealed. The Rule permits us to do this in order to “protect the interests of any person”. The documents referred to contain material that is protected by privilege or client confidentiality, and we accordingly so order.