

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

DANIEL BRUCE GELLER

Respondent

Decision of the Hearing Panel

Hearing date: June 23, 2004

Panel: Gordon Turriff, Q.C., Single Bencher Panel

Counsel for the Law Society: Todd Follett

Counsel for the Respondent: Jerome Ziskrout

[1] As a single member panel by consent, I conducted a hearing into a citation (Exhibit 1) issued on April 3, 2003. The schedule to the citation listed 11 alleged breaches of the Law Society Rules as follows:

" Your conduct or competence in that you:

1. breached Rule 3-59(1) of the Law Society Rules in that you failed to record all funds received and disbursed in connection with your practice by maintaining books, records and accounts as required.
2. breached Rule 3-59(2) in that you did not maintain books, records and accounts in a legible form.
3. breached Rule 3-59(3) in that you failed to record transactions in chronological order and in an easily traceable form.
4. breached Rule 3-61(1)(a) in that you did not maintain a general cash book or synoptic as required.
5. breached Rule 3-61(1)(b) in that you did not maintain an accounts receivable ledger or other suitable system as required.
6. breached Rule 3-61(1)(c) in that you did not maintain copies of bank validated duplicate deposit slips for all deposits made.
7. breached Rule 3-62(1) in that you did not keep file copies of all billings to clients.
8. breached Rule 3-63(1) by not recording each general transaction promptly as required.
9. breached Rule 3-63(2) by not recording all funds received on account of fees or disbursements in your general books and accounts as required.
10. breached Rule 3-63(3) by not immediately delivering a bill or issuing a receipt for funds received under Rule 3-63(2).

11. breached Rule 3-64 by not adding and balancing your general cash book and synoptic journal at least monthly."

[2] Counsel for the Law Society did not seek an adverse determination of any count other than the counts numbered 2, 4, 5 and 6 because the counts for which no adverse determination was sought either overlapped the others or because the alleged breaches could not be proved, exculpatory information having come to light after the issuance of the citation. In the circumstances, pursuant to section 38(4) of the *Legal Profession Act*, S.B.C. 1998, c. 9, I dismissed counts 1, 3, 7, 8, 9, 10 and 11.

[3] The Respondent admitted that the breaches alleged in counts 2, 4, 5 and 6 had been proved. Particulars of the admitted breaches are recorded in an Agreed Statement of Facts (Exhibit 2) which I reproduce here:

- " 1. Mr. Daniel Geller was called to the bar of the Province of British Columbia on May 15th, 1974.
2. An audit was ordered under Rule 4-43 on June 13th, 2002 of Mr. Geller's books, records and accounts. A copy of this Audit Order is attached to this Agreed Statement of Facts. Attachment 1.
3. Rosanne Terhart, then of the Law Society staff, was assigned to perform the audit of Mr. Geller.
4. Ms. Terhart began her audit on October 8th, 2002. The period of her audit examination was October 1st, 2000 to September 30th, 2002.
5. During the period October 1st, 2000 to September 30th, 2002, Mr. Geller was a sole practitioner practising out of an office in his home in West Vancouver.
6. A copy of the Curriculum Vitae of Rosanne Terhart is Attachment 2.
7. Ms. Terhart has been permitted to give opinion evidence regarding audits she performed at two Law Society hearings concerning Peter Hammond.
8. It is agreed that Ms. Terhart has the qualifications necessary to be permitted to give opinion evidence before this Tribunal in the area of compliance with Law Society Rules, Part 3, Division 7, which govern Accounting.
9. In her examination of the books, records and accounts produced to her by Mr. Geller, Ms. Terhart noted certain deficiencies in those books, records and accounts.
10. A copy of the narrative portion of Ms. Terhart's audit report of March 1st, 2004 is Attachment 3. Any reference to client names has been deleted from this attachment.
11. Some of the apparent deficiencies were shown not to be flaws in Mr. Geller's books, records and account upon production of further records by Mr. Geller to Ms. Terhart.
12. Mr. Geller admits to the following breaches of Part 3, Division 7, Law Society Rules during the period October 1, 2000 to September 30, 2002:
 - a) he failed to maintain a general cash book or synoptic as required by Rule 3-61(1)(a);
 - b) he failed to maintain a complete Accounts Receivable ledger or other suitable system as required by Rule 3-61(1)(b);
 - c) he failed to maintain copies of bank validated deposit slips for all deposits made as required by Rule 3-61(1)(c);
 - d) he failed to maintain records in wholly legible form contrary to Rule 3-59(2).

13. Mr. Geller notes that he has a neurological impairment of his right hand which adversely affects his ability to write clearly.

14. The Disciplinary Committee directed the issuance of a citation against Mr. Geller for various breaches of Part 3, Division 7 Law Society Rules on April 3, 2003.

15. An application to have Mr. Geller suspended from practice or for conditions to be imposed on his practice under Section 39 of the *Legal Profession Act* was conducted on February 19, 2003. A copy of the decision of the three benchers considering the application is Attachment 4.

16. By the time of the completion of Ms. Terhart's audit in March 2004, Mr. Geller had established and maintained a complete Accounts Receivable system, was properly maintaining a synoptic, and was retaining bank validated duplicate deposit slips for all transactions."

[4] I determined, pursuant to section 38(4)(b)(iii) of the *Act*, that the Respondent had breached the Rules and, after hearing a joint penalty submission from counsel, and pursuant to section 38(5) of the *Act*, I fined the Respondent \$2,000.00 and imposed a condition on his practice, namely, that he employ a chartered accountant to perform all required accounting work with reference to his practice and, at his expense, direct the accountant to report to the Law Society at six month intervals (the first report to be provided by January 6, 2005), for as long as the Respondent shall remain in practice, that he has been keeping a synoptic; that he had been maintaining an account receivable ledger or other suitable system; and that he had been maintaining copies of bank validated duplicate deposit slips for all deposits made. Pursuant to Rule 5-9, I also ordered the Respondent to pay the costs of the hearing in the amount of \$5,000.00. I required the fine and the costs to be paid within six months from June 23, 2004.

[5] I accept the submission of Law Society counsel that the Respondent's breaches are not small matters. Obviously if lawyers do not keep records as required, such investigations as the Law Society may see the need to make can become much more difficult than they should be.

[6] Plainly the Respondent neglected his important record-keeping obligations. But I was told, and I accept, that the neglect occurred at a time when the Respondent was distracted by an unfortunate combination of events in his private life. Through his counsel the Respondent assured me that the breaches would not be repeated and, with the condition requiring the regular reports from the chartered accountant, I am satisfied that the assurance is a good one.

[7] While I accepted the proposed penalty as appropriate, I did ask counsel whether there might not be an anomaly in a fine of \$2,000.00, considering that lawyers who have failed to discharge their trust obligations to remit collected GST and PST have, recently at least, been fined amounts of \$1,500.00. As I see it, and as I suggested in my decision in *Medd*, 2004 LSBC 15, if one of the fines is outside the appropriate range, it is the fine in the tax cases.