

2004 LSBC 28

Report issued: September 15, 2004

Citation issued: January 12, 2004

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

## **RUDI GELLERT**

Respondent

### **Decision of the Hearing Panel on Facts and Verdict**

Hearing date: August 23, 2004

Panel: John Hunter, Q.C., Single Bencher Panel

Counsel for the Law Society: James A. Doyle

Counsel for the Respondent: Russell MacKay

## **Background**

[1] On January 12, 2004 a citation was issued against the Respondent pursuant to the *Legal Profession Act* and Rule 4-15 of the Law Society Rules by the Executive Director of the Law Society of British Columbia pursuant to the direction of the Chair of the Discipline Committee. The citation directed that this Hearing Panel inquire into the Respondent's conduct as follows:

1. You failed to respond promptly or at all to communications from the Law Society in relation to a complaint by S.S., contrary to Chapter 13, paragraph 3 of the *Professional Conduct Handbook*. These communications consisted of letters dated March 24, April 15, April 30 and May 12, 2003.
2. You failed to respond promptly or at all to communications from the Law Society in relation to a complaint by V.C., contrary to Chapter 13, paragraph 3 of the *Professional Conduct Handbook*. These communications consisted of letters dated March 31, April 22, May 7 and May 20, 2003.
3. You failed to serve your client V.C. and her company K. Inc. in a conscientious, diligent and efficient manner, contrary to Chapter 3, paragraph 3 of the *Professional Conduct Handbook*, particulars of which include one or more of the following:
  - (a) You failed to file annual reports for K. Inc. with the Registrar of Companies from 1999 onward;
  - (b) You failed to inform your client that you had not filed annual reports for K. Inc.;
  - (c) You failed to inform your client that you received a warning letter from the Registrar of Companies dated September 14, 2001 that failure to file annual reports would lead to K. Inc. being struck from the Register; and
  - (d) You failed to inform your client that K. Inc. was struck from the Register in or about December

2001.

4. In 2003, you represented a purchaser in a conveyancing transaction. As part of the transaction, you gave the following undertaking to the lender's lawyer, Gerald J. DeCario, in or about May 2003:

" The writer's client has authorized me on its behalf to execute any and all security you may require to secure the \$100,000.00 on the terms mentioned in this letter. I undertake to execute such security on demand by you."

You breached the undertaking by failing to execute a Modification of Rights to Purchase document after Gerald J. DeCario made demand that you comply on or before June 20, 2003, contrary to Chapter 1, subparagraph 4(2) and Chapter 11, paragraph 7 of the *Professional Conduct Handbook*.

5. You failed to respond promptly or at all to communications from Gerald J. DeCario in relation to an undertaking you gave him in 2003, contrary to Chapter 11, paragraph 6 of the *Professional Conduct Handbook*. These communications included telephone calls on June 18 and June 20, 2003 and letters dated May 29, June 17 and June 24, 2003.

6. You failed to respond promptly or at all to communications from the Law Society in relation to a complaint by Gerald J. DeCario, contrary to Chapter 13, Rule 3 of the *Professional Conduct Handbook*. These communications consisted of letters dated July 14, August 6, August 22 and September 3, 2003.

[2] At the start of the proceedings the second (c) subsection of paragraph 3 of the citation has been struck by agreement.

[3] The Respondent acknowledged proper service of the citation.

[4] Pursuant to Rule 5-2(2), the Respondent agreed in writing to a panel consisting of a single Benchers.

### **Agreed Statement of Facts**

[5] An Agreed Statement of Facts was filed in these proceedings as Exhibit 2. The relevant facts are as follows.

1. At its meeting of November 13, 2003, the Discipline Committee resolved to recommend to the Chair of the Discipline Committee that there be a direction to issue a citation against the Respondent on six counts, following receipt of complaints from three separate complainants (the " Citation" ).

2. The Discipline Committee further resolved to refer the matter to three Benchers pursuant to Section 39 of the *Legal Profession Act* to determine whether the Respondent ought to be suspended or whether conditions should be placed on his practice pending final disposition of the Citation.

3. By letter dated December 16, 2003, the Respondent provided the Law Society with the following undertaking:

" I, Rudi Gellert, hereby undertake to immediately cease practicing law until a qualified medical practitioner produces a report satisfactory to the Law Society concerning my fitness to practice law."

### **Complaint #1**

4. In 2001, the Respondent was representing R.S. in divorce and custody proceedings. On December 21, 2001, R.S.'s wife, S.S., attended at the Respondent's office to swear an affidavit attaching Interrogatories and her Answers to Interrogatories which had been prepared by the Respondent.
5. By letter dated February 28, 2003 S.S. wrote to the Law Society concerning her dealings with a lawyer associated to the Respondent. A Law Society staff lawyer wrote to the Respondent on March 24, 2003, seeking a response from the Respondent and his associate concerning S.S.'s complaint.
6. Follow up letters requesting a response were sent April 15, April 30 and May 12, 2003.
7. Subsequent to May 12, 2003, the Respondent provided R.S.'s file, but did not respond to the Law Society's requests until July 14, 2004 when a letter was delivered to the Law Society through counsel for the Respondent.

## **Complaint #2**

8. In 1998, the Respondent was retained by V.C. to provide corporate services, including setting up a company related to V.C.'s consulting service.
9. The company was registered on July 9, 1998 (" K. Inc." ). The Respondent provided a reporting letter advising that he would be filing a Notice of Directors and would be preparing the Annual Reports for K. Inc.
10. On November 4, 1998 the Respondent wrote to V.C. and her partner confirming the Notice of Directors had been filed and confirming that he would prepare the Annual Reports for K. Inc, acknowledging that they needed to be filed each year on the anniversary date of incorporation. He also indicated there would be a fee for this service.
11. On October 19, 1999, the Respondent rendered an account to K. Inc. which included charges for completing and submitting the Annual Report to the Corporate Registry. The Respondent received no reply to this letter and the account was not paid. V.C. has no recollection of receiving the letter or account.
12. The Respondent did not file the Annual Report for 1999 or any subsequent year.
13. The last document filed with the Corporate Registry was the 1998 Notice of Directors.
14. By registered letter dated September 14, 2001, the Registrar of Companies sent notification via the Respondent's office that K. Inc. would be struck from the Register due to no Annual Reports being filed for the company for two years, unless the situation was remedied within one year.
15. On December 14, 2001, K. Inc. was struck.
16. V.C. learned from a financial institution in November 2002 that K. Inc. had been struck. The Respondent offered to have K. Inc. restored, but V.C. declined this offer. She had already retained another lawyer to attend the restoration. She incurred approximately \$2,309.43 in expenses to have K. Inc. restored.
17. V.C. attempted to contact the Respondent at least three times requesting a response regarding the costs incurred to restore K. Inc. She did not receive a response from the Respondent.
18. By letter dated March 12, 2003, V.C. wrote to the Law Society, outlining the complaint.
19. On March 31, 2003, a Law Society staff lawyer wrote to the Respondent sending a copy of V.C.'s

letter of March 12, 2003, requesting a response.

20. Follow up letters were sent on April 22, May 7 and May 20, 2003.

21. By letter dated September 25, 2003, the Law Society staff lawyer wrote to the Respondent and set out a summary of the facts as understood by her (essentially as outlined in paragraphs 10 to 19 above).

22. The Respondent did not respond to the Law Society, however, in December 2003 and following, letters were delivered through counsel for the Respondent, indicating that the Respondent was seeking treatment for medical conditions.

### **Complaint #3**

23. In 2003, the Respondent acted for the purchaser of a property located in Surrey, British Columbia. Another member of the Society, G.D., acted for the Vendor.

24. By letter dated May 15, 2003, the Respondent gave G.D. his undertaking as follows:

" The writer's client has authorized me on its behalf to execute any and all security you may require to secure the \$100,000.00 on the terms mentioned in this letter. I undertake to execute such security on demand by you."

25. On May 29, 2003, G.D. wrote to the Respondent's firm enclosing a Modification of Rights to Purchase and requested the Respondent execute the document on behalf of his client in accordance with his undertaking.

26. On June 10, 2003, G.D. spoke with the Respondent by phone, at which time the Respondent promised to find the Modification Agreement, sign it and courier it back to G.D.

27. When he heard nothing further, G.D. wrote on June 17, 2003, requesting compliance with the Respondent's undertaking by June 20, 2003.

28. Following the June 17, 2003 letter, G.D. placed two more calls to the Respondent on June 18 and June 20, 2003, but was only able to speak to the receptionist each time. He left messages for the Respondent asking him to return his calls, but received no response.

29. By letter dated June 24, 2003, G.D. advised the Respondent that he had breached his undertaking of May 15, 2003.

30. By letter dated July 10, 2003, G.D. wrote to the Law Society concerning the Respondent's breach of undertaking as well as his failure to respond to G.D.'s requests made from time to time.

31. A Law Society staff lawyer wrote to the Respondent on July 14, August 6, August 22 and September 3, 2003, requesting a response to G.D.'s complaint. By letter dated September 29, 2003, G.D. advised the Law Society staff lawyer that he had had no communication from the Respondent since he spoke to him on June 10, 2003. He also confirmed that another lawyer at the Respondent's office assumed conduct of the file and advised G.D. of this by letter dated July 31, 2003.

32. The transaction completed in mid-August 2003, despite the Modification Agreement never being signed. G.D. advised the Law Society that while his client had not suffered a financial loss as a consequence of the Respondent's breach of undertaking, there was " some anxiety about being unsecured for the \$100,000.00."

33. The Respondent did not respond to G.D., nor did he specifically respond to the requests made by

the Law Society, however, in December 2003 and following, letters were delivered through counsel for the Respondent, indicating that the Respondent was seeking treatment for medical conditions.

### **Medical Condition**

34. In December 2003, the Respondent had undergone a diagnostic evaluation by Dr. Ray Baker. In an undated letter faxed to the Respondent's counsel on December 15, 2003, Dr. Baker said, in part:

" . . . this letter is to confirm that I have completed a three-hour diagnostic evaluation of this man today. Based on clinical interviews, self-administered diagnostic questionnaires, laboratory testing and physical examination, I have formed a solid diagnostic opinion. It is my opinion that this man suffers from severe major depression to the point that it will significantly affect his ability to practice law at this time. I have recommended that he voluntarily remove himself from the practice of law until he has received and responded to psychopharmacological and psychotherapeutic treatments."

35. In a more extensive report dated December 18, 2003, Dr. Baker outlined his assessment of the Respondent which took place on December 15, 2003.

36. In terms of his mental status examination, Dr. Baker concluded that " he is somewhat avoidant and does not deal with problems as they come up but this is a new trait for him."

37. In terms of Beck Depression Inventory, Dr. Baker wrote:

" Rudi Gellert scored 35, one of the highest scores I have seen, indicating significant symptoms of depression."

38. In terms of recommendations, Dr. Baker wrote:

" Rudi Gellert is not fit to work as a lawyer at this time, as he is profoundly impaired by his depression. His hypothyroidism appears to be inadequately treated and should be evaluated by an endocrinologist and his medication should be adjusted. Once he is started on an antidepressant and the dose adjusted until he responds he would benefit a great deal from a course of intensive cognitive behavioural therapy to identify some of the cognitive distortions and correct them. He is troubled by lifetime of shame."

39. Dr. Baker concluded his report, writing as follows:

" With respect to the Law Society incidents, it is my opinion that this lawyer's uncharacteristic procrastination behaviour was a direct result of his untreated depression and with proper treatment it is unlikely to be repeated."

### **Admissions**

[6] The Respondent, in the Agreed Statement of Facts, made the following admissions.

(a) That he failed to respond promptly to communications from the Law Society in relation to a complaint by S.S., contrary to Chapter 13, paragraph 3 of the *Professional Conduct Handbook*. These communications consisted of letters dated March 24, April 15, April 30 and May 12, 2003.

(b) That he failed promptly to respond to communications from the Law Society in relation to a

complaint by V.C., contrary to Chapter 13, paragraph 3 of the *Professional Conduct Handbook*. These communications consisted of letters dated March 31, April 22, May 7 and May 20, 2003.

(c) That he failed to serve his client, V.C., and her company, K. Inc., in a conscientious, diligent and efficient manner, contrary to Chapter 3, paragraph 3 of the *Professional Conduct Handbook*, particulars of which include:

- i) he failed to file Annual Reports for K. Inc. with the Registrar of Companies, from 1999 onward;
- ii) that he failed to inform his client that he had not filed Annual Reports for K. Inc.; and
- iii) he failed to inform his client that he had received a warning letter from the Registrar of Companies dated September 14, 2001, that failure to file Annual Reports would lead to K. Inc. being struck from the Register.

(d) That, in 2003, he represented a purchaser in a conveyancing transaction. As part of the transaction he gave the following undertaking to the lender's lawyer, Gerald DeCario, in or about May 2003:

The writer's client has authorized me on its behalf to execute any and all security you may require to secure the \$100,000.00 on the terms mentioned in this letter. I undertake to execute such security on demand by you.

He breached the undertaking by failing to execute a Modification of Rights to Purchase document after Gerald DeCario made demand that he comply on or before June 20, 2003, contrary to Chapter 1, subparagraph 4(2) and Chapter 11, paragraph 7 of the *Professional Conduct Handbook*.

(e) He failed to respond to communications from Gerald DeCario in relation to an undertaking he gave him in 2003, contrary to Chapter 11, paragraph 6 of the *Professional Conduct Handbook*. These communications included messages left by telephone calls on June 11 and June 20, 2003 and letters dated May 29, June 14 and June 17, 2003.

(f) He failed to respond promptly to communications from the Law Society in relation to the complaint by Gerald DeCario, contrary to Chapter 13, Rule 3, of the *Professional Conduct Handbook*. These communications consisted of letters dated July 14, August 6, August 22 and September 3, 2003.

[7] The Respondent admits that his conduct, as set out in paragraph [6] constitutes professional misconduct.

[8] Following a consideration of submissions by counsel, I find the Respondent guilty of professional misconduct on the facts described herein.